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RECORDS EXTRACT OF APPELLANT

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IN THE
**APPELLATE COURT**
OF MARYLAND

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September Term 2022,
**No. 1145 & No. 1457**

---

JUSTIN HOLDER

*Appellant*

V.

JEFFREY YOUNG

*Appellee*

---

Appeal from the Circuit Court of Washington County
The Honorable Andrew F. Wilkinson

---

# RECORD EXTRACT

**Volume 2**

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JUSTIN HOLDER
*APPELLANT*

**IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND**

**JEFFREY YOUNG** *
**Plaintiff** *
**v.** * **CASE NO. C-21-CV-20-371**
**JUSTIN HOLDER, et al.** *
**Defendants** *

**TRANSCRIPT OF PROCEEDINGS**

**(MERITS HEARING)**

**(VOLUME II – DAY TWO – MORNING SESSION)**

Circuit Court
Hagerstown, MD
June 22, 2022 at 9:03 a.m.

Before:

**The Honorable Andrew F. Wilkinson**

Appearances:

**R. David Pembroke, Esquire, attorney for Plaintiff, Jeffrey Young; and**

**Justin Holder, Defendant, pro se; and**

**Brandy Peeples, Esquire, attorney for Defendant, Deena Holder; and**

**Robert Kline, Esquire, attorney for Defendant, Uncle Eddies Broken Down Palace.**

Transcribed from electronic recording by:

Linde M. Cessna, Court Reporter

Circuit Court for Washington County, Maryland

The Court House

Hagerstown, Maryland 21740

240-313-2564

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**P R O C E E D I N G S**

**(VOLUME II – DAY 2)**

THE COURT: Everybody have a seat please. Okay, we are on the record for Jeffrey Young versus Justin Holder, et al., C-21-CV-20-371, second day of trial. I believe when we ended yesterday we had Mr. Joliet on the stand ready for cross-examination. But before we go, do we have any preliminary things we need to discuss, housekeeping-wise before we get Mr. Joliet back on the stand?

MR. KLINE: Yes, Your Honor, good morning. Robert Kline on behalf of Uncle Eddies.

THE COURT: Yes, sir.

MR. KLINE: As the Court probably recalls yesterday Mr. Holder and Mr. Pembroke indicate they might come to a stipulation regarding Stonecrest witnesses.

THE COURT: Yes.

MR. KLINE: It might alleviate the time at trial. They've come to an agreement. They've been so kind to ask me to read it to the Court.

THE COURT: Alright, hang on a second.

MR. KLINE: To a certain extent I can read it and then I can pass it up to your clerk and it can be scanned in.

THE COURT: That be fine. We should do that. Sure,

go ahead.

MR. KLINE: So, with respect to the Stonecrest owners the record title owners of lots 9 through 17, I'm adding the word inclusive, in Stonecrest neighborhood are Christine Wetzel - - Do you need spellings, Your Honor?

THE COURT: No.

MR. KLINE: Christopher Wetzel, excuse me. Scott and Christine Morral, Susan Selby, David Ickes, I-C-K-E-S.

THE COURT: Yes.

MR. KLINE: John and Christine Pickett. Matt and Rebecca Larson. Charles Blancato. Carissa Myers.

THE COURT: Carissa Myers.

MR. KLINE: Are defined as the Stonecrest owners.

THE COURT: Okay.

MR. KLINE: No Stonecrest owner recalls seeing any No Trespassing signs to the east of their property in Stonecrest Circle, Keedysville, Maryland 21756. Continuing no Stonecrest owner has personal knowledge of subject property, of the subject property of the subject property, added the, subject property prior to 2016 except Christine Morral who observed No Trespassing signs on the eastern side of her property, which is designated as Lot 9, lot number 9. Now, with the Court's permission I'll just hand this Uncle Eddie's number 1.

(Defendant Uncle Eddie's

exhibit 1 was marked for identification)

THE COURT: Thank you Uncle Eddie's. Okay, Mr. Pembroke, have you reviewed this stipulation?

MR. PEMBROKE: Yes, Your Honor, I have.

THE COURT: And is the Plaintiff agreeable to this stipulation?

MR. PEMBROKE: Yes, sir.

THE COURT: Okay. Ms. Peeples?

MS. PEEPLES: Mrs. Holder is agreeable as well. Thank you.

THE COURT: Mr. Holder?

MR. HOLDER: Yes, Your Honor, I'm agreeable too.

THE COURT: You wrote it right?

MR. HOLDER: Correct, sir.

THE COURT: Got it. Mr. Kline?

MR. KLINE: Yes, Your Honor, on behalf of Uncle Eddies, I guess those individuals can then be excused. I believe one of them is in the audience.

THE COURT: Okay, who do we have here in the audience?

MS. PEEPLES: Susan Selby.

THE COURT: Susan Selby, okay. And the gentleman behind?

MR. WREN: Charles Wren.

THE COURT: Okay. Who are you here for?

MR. WREN: Carissa Myers.

THE COURT: Okay. So, Mrs. Selby, Carissa Myers, the Picketts and Mrs. Larson who are all waiting here or are waiting for me I can excuse all of them, is that correct Mr. Holder?

MR. HOLDER: I believe that's correct.

THE COURT: Okay, and not only them but I can to whatever degree you subpoenaed or anyone subpoenaed any of these owners as are listed on here they are free, the subpoenas are no longer active, is that correct?

MR. HOLDER: I'd like to keep the subpoena active on Mr. Ickes and the Morrals. They do have knowledge of the day with the bobcat.

THE COURT: Okay. Okay. But at least for the four that we just talked about, Mrs. Selby, Carissa Myers, Larson and the Picketts they are free not to attend trial, correct?

MR. HOLDER: Correct.

THE COURT: Okay. Ms. Vanderau, would you be able to call Mr. Larson?

MS. VANDERAU: Yes.

THE COURT: Thank Mr. and Mrs. Larson for making themselves available to the Court. Will you please call the Pickett's attorney and explain it to him and thank

him for having been able to make the Picketts available if needed be okay?

MS. VANDERAU: Yes.

THE COURT: Thank you. Those witnesses will be excused. Mrs. Selby, you are excused. Don't need to be here and you don't need to come back tomorrow, okay.

MS. SELBY: Okay.

THE COURT: Okay. Thank you very much. Mr. Wren, can you let Ms. Myers know that she is excused as well? She does not need to come today or tomorrow.

MR. WREN: Yes, sir.

THE COURT: Okay.

MR. HOLDER: Your Honor, would it be alright if I sent Mr. Blancato a text message excusing him?

THE COURT: If you choose to, it be fine.

MR. HOLDER: Okay.

THE COURT: Thank you, sir.

MR. KLINE: Yes, I definitely wanted to introduce something in this trial.

THE COURT: I'm happy that you did.

MR. KLINE: Thank you, sir.

THE COURT: Okay. Uncle Eddie's 1 is admitted as the stipulation concerning Stonecrest owners.

(Defendant Uncle Eddie's exhibit 1 was admitted into

evidence)

THE COURT: Okay, that takes care of the Picketts. Takes care of Mrs. Larson. Any other preliminary matters we need to deal with before I get to my list? Go ahead.

MR. PEMBROKE: Well, Your Honor - -

THE COURT: I'll get back to you Mr. Holder.

MR. PEMBROKE: It may not be the most appropriate time but if the Court recalls we talked about stipulations as to qualifications of experts yesterday.

THE COURT: Yes.

MR. PEMBROKE: And I reserved comment with respect I believe it's to a Mr. Dowling.

THE COURT: Okay.

MR. PEMBROKE: That was gonna be called or maybe called by one of the Defense.

THE COURT: Yes, I see Dowling was reserved.

MR. PEMBROKE: Um, in reviewing - - In reviewing discovery responses yesterday I do not see where any of the Defendants listed him as an expert nor does his name appear on any of the pre-trial statements as an expert. So, on that basis to I believe his address is in Annapolis, um, in order to avoid him coming up perhaps unnecessarily I would object to him being called on that, on that basis. I will say, however, Court is aware of how voluminous the record is in this case.

THE COURT: It is voluminous.

MR. PEMROKE: I believe that, I believe that Mr. Holder filed Supplemental Answers to Interrogatories shortly before the deadline, the end of March. I was not able to locate my copy of that but I do not recall seeing Mr. Dowling's name on it.

THE COURT: Okay.

MR. PEMBROKE: If his name is on it I apologize for wasting the Court's time but did not appear in anything else.

THE COURT: Very well.

MR. PEMBROKE: That I was able to find.

THE COURT: Okay. Mr. Holder, can you help me out here?

MR. HOLDER: Uh, yes, Your Honor. He's correct. I did add it on the supplemental discovery. I took Mr. Dowling's deposition on March 22nd in the *Estes* matter, realized he had a lot of relevant testimony. He had already researched the boundary line in this matter so I added it to the interrogatory answers I served to Mr. Pembroke and I think he's correct, it was March 22. I think I served him the same day I finished the deposition here.

THE COURT: So, how was Mr. Pembroke to get a deposition done of Mr. Dowling before the discovery

deadline?

MR. HOLDER: Uh, I barely got it done before the discovery deadline.

THE COURT: No, you did it in a different case.

MR. HOLDER: Right.

THE COURT: But then you supplemented here.

MR. HOLDER: I did.

THE COURT: Nine days before the discovery deadline, how was Mr. Pembroke reasonably to get a discovery deposition done of an expert in nine days?

MR. HOLDER: Well, he would have had to asked for an extension discovery deadline to do - -

THE COURT: I don't think that's his requirement. Okay. So, you believe you were timely?

MR. HOLDER: He added witnesses too, so.

THE COURT: I'm sorry?

MR. HOLDER: He added witnesses on his.

THE COURT: Well we are talking about an expert witness.

MR. HOLDER: I know, I understand.

THE COURT: When did you expect to call Mr. Dowling?

MR. HOLDER: That's - -

THE COURT: I guess the question is we have two days left, right.

MR. HOLDER: Um hum.

THE COURT: Mr. Joliet, I'm sure you have a lot of questions for him. There's probably two more witnesses for the Plaintiff. I'm sure you're going to be a witness I would guess. When do you expect to - - And then you had Clabaugh, Nagle, Culler and Moser as expert witnesses and now we have a fifth expert witness for the Defense, Mr. Dowling. When were you expecting to get him in in the next - - Let's say the Plaintiff can finish by noon today. When were you getting all of those witnesses in in a day and a half including I would presume you testifying, which could be kind of long?

MR. HOLDER: I was - - Yeah I was going to work myself in when we get a gap of, you know, if we just have something that's not moving and I was planning - -

THE COURT: Okay.

MR. HOLDER: Mr. Culler and Mr. Moser were Mr. Pembroke's experts. I don't know that they're going to get called.

THE COURT: Oh, okay. I thought they were yours. But you definitely have Clabaugh and Nagle?

MR. HOLDER: Yeah. I expect Clabaugh to be about fifteen minutes. I don't think Nagle is going to be very long and I don't think Mr. Dowling is going to be in rebuttal and I may - - Mr. Dowling's testimony may be exactly what Mr. Joliet testifies to today. Until I

examine him I'm not sure.

THE COURT: Okay. Well I'm going to reserve on ruling on that. I'll make a decision on that probably after lunch as to whether Mr. Dowling is even going to be permitted to testify. My concern is that you found Mr. Dowling in a different case and then supplemented with only nine days left in the discovery deadline here and that really doesn't give the Plaintiff enough time to do a discovery deposition which I think they're entitled to. So, I'll make a decision after lunch. Anything else then Mr. Pembroke?

MR. PEMBROKE: No, Your Honor.

THE COURT: Okay. Anything else then any other preliminary matters?

MR. HOLDER: No, Your Honor.

THE COURT: Any preliminary matters Ms. Peeples?

MS. PEEPLES: No, Your Honor.

THE COURT: Mr. Kline?

MR. KLINE: No, sir.

THE COURT: Okay, before we get going let's go back and talk about the town and Mr. Lord because I think Keedysville was probably waiting to hear from me. You can stand up, that's fine.

MR. HOLDER: Okay. I did send Mr. Kuczynski last night telling him definitely to hold Mr. Levy for this

afternoon. He's representing him as well.

THE COURT: I'm sorry, who?

MR. HOLDER: Mr. Levy.

THE COURT: Who is Mr. Levy?

MR. HOLDER: He was the vice mayor. He's not anymore but.

THE COURT: Okay.

MR. HOLDER: Mr. Kuczynski is still representing him at some capacity.

THE COURT: Are we talking about the corporate designee at this point?

MR. HOLDER: No.

THE COURT: Or did you subpoena him separately?

MR. HOLDER: I subpoenaed Mr. Levy separately.

THE COURT: Separately.

MR. HOLDER: Yes, sir.

THE COURT: Okay. And he received the subpoena and he knows.

MR. HOLDER: He received it on the 9th.

THE COURT: And when did you - - And Mr. Kuczynski represents him just normally?

MR. HOLDER: I think kind of collequity to the town possibly.

THE COURT: Okay. Do you therefore have Mr. Levy scheduled to testify in this case?

MR. HOLDER: I do this afternoon.
THE COURT: This afternoon.
MR. HOLDER: Yes.
THE COURT: Do you expect Mr. Levy's testimony to cover what you would have wanted from the corporate designee?
MR. HOLDER: That's exactly what I think we can do.
THE COURT: Okay. Therefore, are you still asking me to enforce a subpoena against the town of Keedysville for a corporate designee?
MR. HOLDER: Could I send Mr. Kuczynski an email and tell him not to come today and hold him for tomorrow?
THE COURT: Mr. Levy?
MR. HOLDER: I'm sorry. Mr. Kuczynski.
THE COURT: No, I understand.
MR. HOLDER: So that - -
THE COURT: Are you asking that Mr. Levy be scheduled till tomorrow?
MR. HOLDER: I want to schedule Mr. Levy first.
THE COURT: Yes.
MR. HOLDER: And if he can't provide answers to everything I need or we can't stipulate to some of these emails potentially. I may just have no choice but to have to have the town to bring in my evidence but if I can get it in with maybe Mr. Levy - -

THE COURT: Fair, I understand.

MR. HOLDER: Okay.

THE COURT: I think the answer you're giving me is yes, you want me to enforce the corporate designee subpoena.

MR. HOLDER: Oh, yes I do.

THE COURT: Okay, that's what I'm hearing.

MR. HOLDER: Please do.

THE COURT: Okay. Do you understand that I'm not giving you a guarantee that whoever they bring knows anything about what you're asking?

MR. HOLDER: I do.

THE COURT: All I can do is enforce the subpoena.

MR. HOLDER: Yes, Your Honor, I understand.

THE COURT: Okay. I believe that that subpoena was timely made. I believe you did grant, you did indicate with sufficient specificity what you are thinking about and so I am going to deny the Town's Motion to Quash and I'm going to enforce that subpoena but you don't need that person until tomorrow, is that what I'm hearing you say?

MR. HOLDER: Yes, yes. And I will send that email out to Mr. Kuczynski here as soon as I get a chance on break.

THE COURT: That's fine. Ms. Peeples?

MS. PEEPLES: Uh, Your Honor, just for clarification of the record just so that it's in because this case is very unusual. I just wanted to point out to the Court that under the Service Rules 2-121 there was a question yesterday about whether the Mayor was properly served at work and the Rule provides that services made by delivering to the person to be served a copy of the summons complaint. It doesn't specify where.

THE COURT: Where are you reading that at?

MS. PEEPLES: Rule 2-121 Generally Rule (a)(1).

THE COURT: Okay, hang on. Alright, tell me what it says.

MS. PEEPLES: It says service of process may be made within the state or when authorized by the law of this state outside of the state, number one, by delivering to the person to be served a copy of the summons, complaint and all other papers filed with it. If you continue to read the Rule there is no delineation between in-person service whether it's at a person's employment or at their home or wherever.

THE COURT: Well, hang on. I wonder if part (a) really talks to me as the server handing to you the papers directly, handing them directly to you and I can get you in the parking lot of the grocery store.

MS. PEEPLES: Correct.

THE COURT: Okay. If I don't just walk straight up to you and hand them to you and I'm handing them to someone else then I can do it under number 2. I can leave a copy of the paper at your home or your usual place of abode with a resident of suitable age okay.

MS. PEEPLES: Correct.

THE COURT: That's the difference between 1 and 2. I think you're wrong to suggest that number 1 covers leaving it at somebody's work.

MS. PEEPLES: If the mayor was actually served with it, personally or you authorize service. I was just - -

THE COURT: I'm not hearing that any of that happened.

MS. PEEPLES: Okay. I just wanted to add - - I just wanted to clarify for the Court for the record.

THE COURT: I hear you. And I think it's a fair point. I just want you to know that's my reading of Rule 212(a).

MS. PEEPLES: Completely understand. I just was trying to clear up what was raised yesterday.

THE COURT: Fair enough. Well, let's talk about the Mayor then. Does anyone else wish to be heard on the Motion to Quash Mr. Lord, Mr. Lord's subpoena?

MR. HOLDER: Um, yeah - -

THE COURT: If you wish to be heard I'll hear you.

MR. HOLDER: I read the Rule the same way you do.

THE COURT: Oh, okay. Well, let me suggest this. Again, my reading of the timing rule is that it was timely. I disagree with the Town Attorney as to how to read that Rule. And I think everybody in this case who filed a Motion to Quash used the wrong timing Rule. It's part (b) not part (a). So, I believe it was timely. However, how it was served and where, where it was served I believe was not sufficient and I think when we talk (a) (b) out a subpoena to a person that I can enforce, right. They don't show up. I can send troopers after them, right.

MR. HOLDER: Um hum.

THE COURT: That's kind of a big deal. And therefore I need it to be served by the book. Okay. Alright.

MR. HOLDER: Yep, I understand, Your Honor.

THE COURT: And therefore the subpoena to Mr. Lord is quashed. Okay. So, after all of that, I reserved ruling on Mr. Dowling. We have quashed the Lord's subpoena. And we are holding - - I am enforcing the Town's subpoena for corporate designee, for that person, whoever it is, to be here on Thursday, 9:00 a.m. Fair? Understand?

MR. HOLDER: Fair enough. I do, thank you, Your Honor.

THE COURT: Okay, everybody understand? Okay.

Alright. Are we ready then for Mr. Joliet?

MR. PEMBROKE: Yes, sir.

THE COURT: Mr. Joliet, how are you sir? Can you come on back to the witness stand, sir? Mr. Holder?

MR. HOLDER: Yes, Your Honor.

THE COURT: Give me just a second. I need to write myself a note. Just don't start asking questions until I'm ready, okay. Mr. Clerk, why don't we swear the witness in again since we had a day off. Mr. Joliet, please stand and raise your right hand.

**TESTIMONY OF CHRISTOPHER JOLIET**

**Christopher Joliet**, having been duly sworn, did testify as follows:

THE COURT: Okay. Mr. Holder, please go ahead.

MR. HOLDER: Thank you, Your Honor.

THE COURT: Mr. Clerk, yesterday that was Justin Holder 4. Did we take that sticker off that one or did we keep it?

CLERK: That might have been part of number 4 and yeah, we took it.

THE COURT: Okay.

CLERK: It was one big pack.

THE COURT: No, the big, big pack was - -

CLERK: That was 3.

THE COURT: No, must have been 4 then.

CLERK: There the one that I that we took the sticker off of - -

THE COURT: The big, big pack was 3. We took the sticker off of 3 and then when Mr. Holder started again number 3 was the tax map. Number 4 I have as the Washington County atlas.

CLERK: Atlas documents.

THE COURT: Is it that?

MR. HOLDER: That is it, sir.

THE COURT: Okay, hang on then. Don't touch the sticker. You only let them touch the stickers. Alright, so we're going back to Justin Holder 4.

MR. HOLDER: Justin Holder 4.

THE COURT: Which is not yet admitted.

MR. HOLDER: Correct.

THE COURT: Okay. Go ahead.

MR. HOLDER: I'll give it another try.

THE COURT: That's okay.

**CROSS EXAMINATION**

BY MR. HOLDER:

Q. Mr. Joliet, how are you this morning?

A. Fine, thank you.

Q. Do you recognize that document as something you provided in your work product? (Looking at Justin Holder exhibit 4 previously marked)

A. I do remember that I provided it but I recognize it. I got it's an 1877 atlas of Washington County that I have in my office.

Q. Okay. And yesterday you were talking about Mr. Young's predecessor being a Keedy. Is Mr. Keedy on that atlas?

A. There are a lot of Keedys here obviously.

Q. Jacob H. Keedy.

A. I don't know that it was Jacob. There were two Keedys. There were two brothers and I think they lived on the same property. This is not Mr. Young's house. This was the house that was at the end of the lane.

Q. Sort of where the hump is where it turns down at where the Parcel 1 panhandle is, potentially?

A. Probably. I don't know because it's long gone.

Q. Okay.

THE COURT: Before we start talking too much about what that exhibit says substantively let's get it into evidence first.

MR. HOLDER: I move to admit Exhibit 4 as the Washington County atlas.

MR. PEMBROKE: I want to object at this point based on relevance.

THE COURT: Well, I don't know what it's relevant to until I hear something about it but is this - - Mr.

Joliet has indicated that it was something that he looked at in developing his opinion. So, is that what he testified to?

MR. PEMBROKE: Respectfully, that still doesn't mean it's relevant to the issues in this case just because he looked at it.

THE COURT: Understood.

MS. PEEPLES: I was just going to add, Your Honor, to the extent that Mr. Joliet used that atlas in connection with the preparation of any opinions that he is asserting today it certainly would be admissible.

THE COURT: Mr. Joliet, did you look at that atlas in preparation for your review of this case, the opinions that you stated either in your discovery deposition or in trial today? Is that something you looked at in reviewing this case?

A. When I was reviewing the case, yes I did look at it.

THE COURT: Justin Holder 4 will be admitted. Okay, now you can ask substantive questions about what's in the exhibit.

(Defendant Justin Holder exhibit 4 was admitted into evidence)

Q. Is the railroad on that exhibit?

A. Yes, it is.

Q. And is there a property that's bounded by the creek in that railroad just to the north and west of, has two houses. One called Kretzer, one called Baxter on it. Probably the third page of it.

A. Baxter and Kretzer, yes.

Q. Okay and do you know who Baxter and Kretzer were? Were they predecessors of any of the parties in this court from your title research?

A. Yeah, they were in the what I call Holder chain.

THE COURT: The what chain?

A. Holder chain. Holder, Uncle Eddie, whatever.

Q. And was Baxter the predecessor for what is now 25 Antietam Drive?

A. I think so. Probably all been jumbled up because he added a property in the back and had a plat of subdivision but I think that's right.

Q. Okay. I move to admit 4 into evidence.

THE COURT: It's already in. May I see it?

MR. HOLDER: Yes.

Q. Mr. Joliet, that's a deed, Liber IN17 folio 538. I think you may have called it 583 sometimes but. It's a deed from Nicholas Stine to Jacob Keedy?

(Defendant Justin Holder exhibit 8 was marked for

identification)

A. Uh - - I think this is in chain. I don't know. It's hard to read. I can't read it. But if it's the 1864 deed (unintelligible) reserve fishing rights.

Q. That's the deed. Yes, it's the deed - -

A. Okay, I mean I can't read it so I don't know.

MR. PEMBROKE: Objection.

THE COURT: Hang on. Mr. Holder, you can't tell the witness what it is that he says.

MR. HOLDER: Okay.

THE COURT: If he's unable to read it or he thinks it's something you can't say yeah, that is what it is, okay?

MR. HOLDER: Okay.

THE COURT: So, the objection is sustained. Next question.

Q. Did you review the deeds and verify that it's the deed that you think it is?

A. I can't read this deed so I can't verify that. I did go back to 1864 and found a deed where the grantor reserved fishing rights over the creek.

Q. Do you remember if that deed was recorded at liber IN17 folio 538?

A. I can't remember right off the bat without looking at my notes.

MR. HOLDER: Is he allowed to look at his notes?

THE COURT: If he has his notes. Do you have your notes, sir?

A. I have notes with me, yeah.

THE COURT: You're allowed to retrieve them.

MS. PEEPLES: Justin.

A. Stine to Keedy April 1, 1864, 100 acres, to Jacob Keedy and saving accepting fishing rights.

THE COURT: And so that I'm understanding. Whose, whose chain of title is this one in?

A. This is the Young chain of title.

THE COURT: Young chain, okay.

MR. HOLDER: Move to admit Justin Holder exhibit 8.

THE COURT: Any objection?

MR. PEMBROKE: No objection.

THE COURT: Holder 8 is admitted. And that is the Stine to Keedy deed 1964.

(Defendant Justin Holder exhibit 8 is admitted into evidence)

A. 1864.

THE COURT: 1864.

A. Right.

THE COURT: Sorry.

MR. HOLDER: Please mark this as Justin Holder

exhibit 9.

(Defendant Justin Holder exhibit 9 was marked for identification)

Q. This is a little easier for you to read Mr. Joliet. Would you review that record?

A. Yes, this is part of Stonecrest chain.

Q. Okay.

THE COURT: So, now we're in the Stonecrest chain?

A. It's early on in the Stonecrest chain.

THE COURT: Okay, go ahead.

MR. HOLDER: Can I admit 9 as deed - -

THE COURT: Tell me what - - Have him tell me what it is.

Q. Can you tell the Court what it is please?

A. It's deed in the Stonecrest chain. Ms. Butts was related to Mr. Cost, Cost who originally owned it. And it came down to I think Pride and then it came to her. It was held by her guardians. Apparently there was a dispute with her guardians. And I think Vincent, I think Vincent Groh was appointed as a substitute guardian and then eventually Jennifer Butts owned it and she had various names as Jennifer Butts Dorsey and I think she had another name or two. And she sold it to I can't remember to who but it eventually ended up in the

Stonecrest chain, yes.

THE COURT: So, which deed is this?

A. This is one in the chain where Vincent Groh Personal Representative of Pride deeds it to her guardians unto Leonard unto Leonard Dorsey and Susan M. Dorsey guardians of the property of Jennifer Butts.

THE COURT: What's the date on the deed?

A. Jennifer Susan Dorsey. At the time she was a Dorsey.

THE COURT: What's the date on the deed?

A. Uh, 1978, April 14, 1978.

THE COURT: Okay, so essentially it's Pride to Ms. Butts but through - -

A. Essentially, yes.

THE COURT: Through Personal Representatives.

A. Essentially, yeah.

THE COURT: Got it. Okay. Would you like to admit number 9?

MR. HOLDER: Yes, may I admit number 9?

THE COURT: Any objection?

MR. PEMBROKE: No objection.

THE COURT: Justin Holder number 9 is admitted, Deed from Pride to Butts, 1978.

(Defendant Justin Holder exhibit 9 was admitted into

evidence)

Q. On Liber 581 there's a Parcel 3.

A. That's correct.

Q. Is that the parcel in that - - It's a large - - That deed's a large portion of land, it's multiple parcels, correct?

A. Right.

Q. And tract - -

A. I think Parcel 3 is the parcel that crosses over Dogstreet Road and actually contains what is Stonecrest now.

MR. HOLDER: Am I allowed to move these?

THE COURT: Yes, you are.

A. Parcel 3 also includes mountain land which the call the wood lot, which right of one of the farms.

Q. I'm looking Plaintiff's exhibit 10.

THE COURT: Hang on a second. Mr. Holder, move the microphone just a little bit so we're not scratching. There you go. Just move the microphone over to the left a little bit.

MR. HOLDER: Yes, sir.

THE COURT: Okay, that's fine. The microphone is meant to pick up you all when you're down there with the exhibit but if it's hitting the exhibit we won't hear a thing. Okay, so this is exhibit what Mr. Holder?

MR. HOLDER: This is Plaintiff's exhibit 10 I have on the board.

THE COURT: Okay the tax map that was introduced yesterday. Okay. What's your question?

Q. And, you had, you had explained yesterday that this diagonal line going behind P 284 you thought possibly they relocated Dogstreet Road or something and that's why this parcel went straight through this is Parcel 2 where I have my hand just to the west of what is labeled as Parcel 284. Is that where you believe Parcel 2 is?

A. Can you put your finger on Dogstreet Road?

Q. I believe that's to the north of this 1 and this 2.

A. Okay. Right. Got it. Okay. I believe but I'm not sure - -

THE COURT: For the record, we're looking down, we're looking at the bottom left hand corner of the large exhibit. Mr. Holder is generally pointing to what runs to the northeast of lots 1 and 2, which is probably an indication on the tax map of Dogstreet Road. Go ahead.

A. Okay.

Q. And this is generally Parcel 2 below, this diagonal line that goes behind Parcel 286 and Parcel 283?

A. I don't know exactly where it would be but about

a third of the panhandle.

Q. Okay, and this, this was one of the lines on that deed that you have in your hand, Exhibit 9, the 6580, it's the sixth line on that deed.

A. Could be. I don't know.

THE COURT: And when you say this, you're talking about the dashed line?

MR. HOLDER: The dashed line to the right of - - I'm sorry. To the north and east of P284, 286.

THE COURT: It's also to the right. Okay. I understand which line you're looking at. Okay, the witness' answer was he does not know.

Q. Could you review the deed, the sixth line?

A. Uh - -

THE COURT: What do you need?

A. I need ruler or something. A sheet of paper will do.

THE COURT: A sheet of paper will do?

Q. Actually, let me strike that question. Could you find on the deed the line that goes with the second and third lines a deed in 520 in the description?

A. Say that again?

Q. If you go into the description of Parcel number 3 could you find the language that - - Do you find any language in there that goes with the second and third

lines of deed in 520?

THE COURT: Mr. Joliet, I'm providing you Defendant's exhibit number 8, Justin Holder 8, I think that's the IN17 deed he's asking you to look at.

A. This is a deed - -

THE COURT: Is that the one you're asking him?

A. - - of fishing rights.

THE COURT: No, I'm sorry. Give it back to me then.

Q. That's on this side. It's probably on the second page back.

A. And you're on tract 1, is that correct?

Q. The tract 3 that's part of Dales Hills and Vineyard (unintelligible).

A. Well - -

Q. Parcel 3 that became - -

THE COURT: And we're talking about the parcel 3 in the Stonecrest chain?

MR. HOLDER: In the Stonecrest chain. It's Parcel number 3 in Stonecrest chain.

THE COURT: I just want to be sure that I'm on board.

MR. HOLDER: We should probably call it - -

THE COURT: Parcel 3 of the Stonecrest chain, Parcel number 3, is not the same parcel as the Parcel 3 that Mr. Young claims ownership of. Is that correct, Mr. Holder? Because I want the witness to understand.

MR. HOLDER: I think that it's part, I think Parcel number 3 that Mr. Young claims is part of Parcel number 3.

THE COURT: Of the Butts parcel 3.

MR. HOLDER: Of the Butts parcel.

THE COURT: Okay.

A. That would be part that she quick claimed?

Q. Yes.

A. Okay. That stands to reason.

THE COURT: I want to be sure that we are clear. There are two pieces of land in this litigation that are called Parcel 3 and confusing them is a problem for me. Okay.

MR. HOLDER: I think we should call it the Butts chain.

THE COURT: The Young Parcel 3 is just a small pieces strip of land behind lots, call it 10 through 14 of the Stonecrest Development.

MR. HOLDER: Um hum.

THE COURT: The Butts Parcel 3 that these other deeds may talk about is a much larger piece of land, which includes Stonecrest Development, what is now Stonecrest. And then east of Dogstreet Road, either the old Dogstreet Road or the new Dogstreet Road, somebody will explain that to me. Is that right?

MR. HOLDER: That's what I'm trying to do, yes.
THE COURT: Okay.
MR. HOLDER: I probably could do a better job.
THE COURT: No, it's okay. I just - - When we start saying the words Parcel 3 you all better be really clear to me which Parcel 3 we are talking about.
MR. HOLDER: I'm going to say Parcel number 3.
THE COURT: How about the Butts Parcel 3?
MR. HOLDER: Okay, Butts Parcel 3. Okay.
Q. So, looking at Butts Parcel 3 - -
A. Okay.
Q. - - um. Could I have the exhibit?
A. Sure.
Q. Okay. Could you read (inaudible).
MR. KLINE: Could you keep up your voice please?
THE COURT: Make sure you speak loud enough.
MR. HOLDER: Okay.
Q. I said I believe we decided that where it says (unintelligible) I was asking him to confirm that that you believe it should be Fells Foot.
A. That would be Fells Foot.
Q. Okay.
A. I've lost your question.
Q. So, the line prior to the line that adjoins within in 520 on that parcel. Is there a spot on that

description where the lines of Butts Parcel number 3 run with the lines of the deed from September 10, 1832?

A. This deed specifically references it going along Parcel 180 on the tax map.

THE COURT: Next question.

A. The same being designated as Parcel 80 on tax map 73.

Q. 80?

A. I'm sorry. Same as being designated as - - You lost me again. I do see Parcel 80. I think they meant Parcel 180.

Q. Is there any spot in the deed where they run with the lines of the deed from September 10, 1832, recorded at liber and in folio 520?

A. God, I don't know.

Q. The spot I just pointed to Mr. Joliet.

A. I don't know if that runs with it or not. If Parcel 3 was adversely possessed by Mr. Young, it's probably out of the Dorsey chain.

Q. In 1978?

A. Well, he didn't move there until 1980.

Q. Correct. Do you have any evidence of adverse possession on Parcel 3 prior to 1988?

A. Well, yeah, we had the Reeder - -

MR. PEMBROKE: Objection.

A. Reeder chain.

THE COURT: Sustained.

MR. PEMBROKE: Which Parcel 3 are we referring to?

THE COURT: I think the Young Parcel 3, right, is that what you're asking?

MR. HOLDER: Right.

MR. PEMBROKE: Thank you.

A. The one that you're claiming.

Q. Yeah.

A. Okay.

THE COURT: Hang on. There's still an objection. Why is it relevant before 1978 whether there was adverse possession? You asked the question. Why is that relevant?

MR. HOLDER: Well, he said it was adversely possessed by Reeders before 1978 Parcel number 3. And I'm just trying to find the title line.

A. It was probably adversed - -

THE COURT: Overruled.

A. - - by the Reeders. But I don't know. The thing is Mr. Young got it in 1988 and he's had it for thirty-three or thirty-four years.

Q. Correct, but I'm just asking you on that deed does that deed purport to transfer property to Mrs. Butts as Parcel, as Jennifer Butts Parcel number 3 that follows

the same lines as the second and third line of deed - -

A. Maybe but it wouldn't matter.

THE COURT: Hang on. It doesn't matter whether it matters or not. It's, his question is does it follow the same lines?

A. I don't know.

THE COURT: If you're able to know.

A. I don't know.

THE COURT: He doesn't know.

Q. Does the deed say it?

A. I don't know. I'd have to plat it out.

MR. KLINE: You would have to what?

THE COURT: Plat it out.

A. Plat it out.

MR. KLINE: Thank you very much.

Q. Okay, and were you able to do that?

A. Yeah, I can. It takes me awhile.

Q. So, you have experience in surveying?

A. Not in surveying but in platting.

Q. And you didn't plat out any of the deeds in this case in your work product?

A. I don't know, I might have. But it really didn't matter whether it was in the neighbor's deed or not.

Q. Would you be able to check your records and see if you did any platting in relation to this deed in

preparation for trial?

A. If I did it was just on scratch paper and I don't have it anymore.

THE COURT: Mr. Joliet, why don't you sit down. Why don't you step back about three steps.

MR. HOLDER: I apologize.

THE COURT: Is that number 9? I think number 9 has been admitted, yes.

MR. HOLDER: Please mark Justin Holder's 10.

(Defendant Justin Holder exhibit 10 was marked for identification)

Q. Mr. Joliet (inaudible).

THE COURT: Mr. Joliet, can you identify that record for me?

A. 10TH day of September, 1838 I think. And I can't read it. It looks like it's between David Harp or Happ and I can't see who the grantee is.

THE COURT: You can't see who the grantee is? Is there a liber folio on it or, or old numbers?

A. It's folio, it looks like it's 824, it looks like that but it's not real clear.

Q. Mr. Joliet, is there a certified stamp from the Clerk on that?

A. Do what? No, it's not certified by the Clerk's

Office.

Q. Okay. Alright, well if you're not able to identify it I won't move it into evidence then.

A. It looks like it's a 1932 deed and it looks like the folio I don't know whether it's 520, I can't read it. I can't read it.

Q. Okay. I understand.

THE COURT: I think he's having difficulty identifying it.

MR. HOLDER: Shall I leave the sticker on it?

THE COURT: Yes.

Q. You talked about a transfer from Reeder, Mr. Joliet.

THE COURT: I'm sorry. A transfer from what?

MR. HOLDER: A transfer from Reeder to Wickline.

A. That's correct.

Q. Okay. I'm going to put up Plaintiff's exhibit 8. Is that page 778 on the deed from - - (Exhibit placed on easel)

A. It was attached to the deed. I can't remember exactly the page.

Q. Okay.

A. 778 sounds right but I don't know.

Q. Okay. And this was transferred in 1966?

A. Right, from Reeder to Wickline.

Q. Okay, and it purports to have a (unintelligible) stone monument at the northwest corner where the deed begins describing - -

A. Right.

Q. Have you ever located that deed, that stone?

A. No, I was only on the property once after this started.

Q. Have you ever located any monuments related to this plat or plat 2499?

A. No.

Q. Were you in the court where Mr. Young was testifying a fence was replaced?

A. Yes.

Q. Did you understand that to be this fence drawn on this plat on the west side of what is labeled as Parcel 3?

A. I couldn't quite follow. I think that's what he was talking about.

Q. Okay. And do you know if the person that replaced it put it back exactly where it was?

A. I don't know anything about it. Now, when I was out there, there were the remnants of a fence that seemed to go along the property line. In Mr. Frederick's survey he shows a fence and in this survey it shows a fence. Now, the fence doesn't go to the whole end of Parcel 3.

It stops right where that one does and it curves off. But Mr. Frederick's description and Mr. Frederick's survey showed it going straight. It doesn't go where it curves off.

Q. Do you have any evidence that the fence that's on the property now is in the exact same location as the fence that's shown on this plat 778, Plaintiff's exhibit 8, as being the western boundary of Parcel 3?

A. It looks like it to me but I don't know. I'm not a surveyor.

Q. Why does it look like it to you? What tells you that?

A. Because when I was out there I could see the remanents of the fence and it was on the east side of the Stonecrest lots. The Stonecrest lots all had picket fences surrounding them. I think all of them had picket fences.

Q. How do you know that fence wasn't on this darker line and not on this, this dash line? How would you know that?

A. Well, because neither that survey nor Fred Frederick's survey calls for a fence line on Parcel 1.

Q. I was asking about Parcel 3.

A. Right.

Q. How - -

THE COURT: He answered it.

Q. Because - -

THE COURT: You asked how do you know it's not on the dark line. And his answer is because when you read the description the dark line is not described as having a fence. It's the dotted line that has a fence according to the description. That's his answer.

Q. Okay, so you went out in the field and saw a fence and just assumed it was in the same location?

A. Sure, looked like it to me.

Q. Okay. Any other factual evidence you have to establish that that was the same fence?

A. I'm looking at Fred Frederick's survey and I'm looking at this and it all matches up.

Q. Did you locate the monument at the southeast end of this first line from the Plaintiff's stone?

A. Nope.

Q. You haven't located that monument?

A. Nope.

Q. Have you located any monuments on this plat 778 at all?

A. No, I think I did see a stone fence post, which is kind of unusual. I like looking at historic things and I saw the stone column, which was a fence post.

Q. Which you believe to be this, what's labeled as

limestone fence post here?

A. Probably. That's probably it. I just found it of interest.

Q. I'm going to pull this exhibit down. I have another one what's Plaintiff's exhibit 3. (Exhibit being displayed on easel) Were you able to locate any monuments on what's shown as Plaintiff's exhibit 3, any iron pins, any of those on the property?

A. No, I didn't do any survey work.

Q. Okay. Were you able to locate a fence that shows going, it goes horizontally here, did you locate any fencing up at the north end of Parcel 3 going horizontally?

A. I didn't notice any, no.

Q. Okay. You said that Mr. Frederick did his description with corrected bearings and distances.

A. And that's not unusual.

Q. Do you know the - - Do you know the particular lines that he corrected?

A. Yeah, I compared his to Mr. - - Compared his to the, uh, 1966 plat. Some lines were shorter, some were longer. He ended up with less acreage than the 1966 deed.

Q. Okay. And Mr. Frederick - - We're still on Plaintiff's exhibit 3, Mr. Frederick - -

THE COURT: Which is plat 2499.

Q. Yeah, plat 2499. And I'll identify Mr. Frederick's has the limestone fence post. Is that where he starts his property description for the 885 110 deed that Mr. Young got in 1988?

A. I can't remember what his first line was. I thought his first line was over there and then it went down to the panhandle.

THE COURT: Can you describe over there a little bit more clear.

A. I'm not sure about this. I did plat it out to see where it varied. I think that was his first line. Then he goes down here shows the overlap and then over here and then he goes up to the limestone fence post. I think.

Q. Do you believe that's the same fence post you saw on the property?

A. I don't know.

Q. Okay. But you know where the general area is and you know that generally there's a limestone fence post somewhere, somewhere in this general area that was on - -

A. Yeah, somewhere there yeah.

Q. Okay. Were you in the courtroom when Mr. Young testified that he thought his property line where it intersected in this northwest corner and this southeast

corner looked crooked to the right-of-way line to the railroad?

THE COURT: Let's identify the exhibit.

Q. This is exhibit, Plaintiff's 10.

THE COURT: This is the tax map. Do you recall Mr. Young's testimony indicating that it looked crooked? The dash line that is labeled. Can you read that Mr. Holder? I can't see it.

Q. Harry Wickline property survey to the north and east of P180 on the tax map.

A. And asked to identify something on the tax map? I don't remember that.

THE COURT: Okay.

Q. Does this dash line look like it's crooked, that it sticks out into the railroad right-of-way on the south and east side?

A. No. I mean, if I go here there is - -

THE COURT: Looking at exhibit what?

Q. Exhibit 3.

A. There is a change right here.

Q. Okay. And do you know why that - -

THE COURT: You mean that northern property line sort of jogs - -

A. Yeah, the northern property line takes a bend.

THE COURT: South towards the last quarter of it as

it goes to the west?

A. Right. Right.

Q. Is that one of Mr. Frederick's corrected bearings and distances that doesn't match the previous deed?

A. You know, I don't. I'd have to look. I've got notes on it. Do you want me to look at my notes?

Q. Please. Please do.

A. If I can find them. Here we go. It looks like that last line that Mr. Frederick found was 155, that last line and call the Reeder deed was yes. I'm sorry, Fred found it at 156 and Reeder found it at 155.

THE COURT: Okay, hang on a second. The plat that we have up on the board is plat 2499 that is Exhibit what?

MR. HOLDER: 3.

THE COURT: Okay. Mr. Joliet is holding a copy of it.

A. Right, enlarged copies.

THE COURT: Smaller copy than we are looking on the board. And we're talking about the line that is on the northern boundary of Young, the last quarter of it I would say, to the northwest. And you're indicating that that is a slightly different line than what was in the Reeder to Wickline plat for the same distance, for the same exact area, is that what you're saying?

A. Yes, yes. Reeder, Reeder said it was it was Reeder's line 11 and Reeder said it was 155.62 feet. Fred Frederick found it was 156.24 feet.

THE COURT: 156.24 feet.

A. That's correct.

THE COURT: So, we're talking about a half of a foot?

A. Something like that.

Q. What bearing was it - - What was the difference in bearing?

A. I don't know. That would take me some more time to, to see. And I was wrong. Mr. Fred Frederick's starts his line 1 is done here from the limestone post, yeah, right there. From there - -

THE COURT: We are showing the limestone post on Plat 2499 at what I call the turn. The turn is where Mr. Young's driveway turns off the panhandle to go back to his house. There's a limestone fence post there.

A. That would be Fred Frederick's line 1. Fred found it was 105.93 feet and Reeder plat had it at 103.10 peak.

THE COURT: I don't know what line you're talking about.

A. It's line 1. From - -

Q. You're talking about the line from this limestone fence post at the hump - -

A. Yeah.

Q. - - right where Mr. Young makes a turn for his driveway. Coming, we're coming down Mr. Young's driveway to his house, is that correct?

A. Right. That's Fred Frederick's line 1.

THE COURT: Okay. Beginning at the recovered line stone post for a distance of 105.93 feet, is that right?

A. Right.

THE COURT: Okay. I'm looking at the deed, which I'm sure is in evidence.

A. The next one would be line 2, Mr. Frederick finds that was only 256.71 feet and in the Reeder plat it was 261.30 feet. So, there's slight changes like that but I think some of the - -

Q. How about this line coming down from his iron fence post which is going to be the seventh line on the description and the first line on the description of folio 778, Plaintiff's exhibit 8 of the Reeder Wickline deed.

A. Well, the reason that's different is Mr. Frederick took the outside line to include Parcel 3, which is different than what - - I think Mr. Frederick didn't have this inside line at all.

Q. Didn't Mr. Frederick find in his description on 659580 didn't he call to the lands of Jennifer Butts

659580 in the description on deed liber 885 folio 110?

THE COURT: Slow down, Mr. Holder. You're asking a really big question. I need you to ask it again because I don't understand the question.

Q. Did Mr. Frederick - -

THE COURT: In what?

Q. In his description in the deed he presented Young, the 1998 Wickline to Young deed.

THE COURT: So, Mr. Young's deed.

Q. Yep.

THE COURT: Okay.

Q. Liber 885, folio 110. The seventh and eighth lines does he call to the lands of Jennifer Butts - -

A. Right here. Dorsey.

Q. Dorsey. Liber 659 folio 580.

A. Right.

THE COURT: Is that what's shown on the plat there Mr. Joliet to what you just pointed to?

A. Right. That's correct.

THE COURT: Okay. His answer is yes.

Q. Okay.

THE COURT: Because it's shown on plat 2499. I want to be sure that I'm sticking with you here okay. His answer is that it is what plat 2499 shows.

Q. Are you familiar with the calls and controls in

the deed?

A. Yeah.

THE COURT: Have a seat Mr. Joliet.

A. Oh thanks. Yeah. They control over distances.

Q. A call controls over a distance?

A. I have to rethink it. One controls over the other in surveyors. Yes.

Q. And doesn't a call to an adjoining boundary is that the same as (unintelligible)

A. He's not calling to enjoin the boundary. He's calling to the lands of Jennifer Butts.

Q. Okay. By plat?

A. Right.

THE COURT: Hang on. I want him to have the deed in front of him. So, Mr. Clerk, can I have the Young deed of 1988?

CLERK: Plaintiff's 1?

THE COURT: Probably. Mr. Holder, hand that to him. If we're going to talk about what a deed says, the witness has to have the deed.

Q. Right where I have my finger here.

MR. KLINE: Can't hear you.

THE COURT: Hang on.

Q. Where I have my finger on the deed.

THE COURT: How far down was it Mr. Holder?

MR. HOLDER: About three quarters of the way down.

THE COURT: And so, we are on Exhibit number 1. We're on page 110, folio 110. Where are you asking him to start reading?

MR. HOLDER: At the seventh line.

A. Okay. To the lands now formally of Leonard Dorsey.

THE COURT: Alright, stop.

Q. Okay, are those - -

THE COURT: Hang on. Stop. I want to find it. I have my copy.

Q. Okay.

THE COURT: Fence running along the eastern boundary of the lands now of formally of Leonard Dorsey, is that where you are?

A. Yes.

THE COURT: Okay. Let's read the deed exactly as it's written. You summarized it there. You just said to the lands. Let's read it how it reads. Okay.

A. The fence running along the eastern boundary of lands now are formally of Leonard Dorsey at 659580 South 22 degrees, uh, South 22 degrees 24 minutes 46 seconds west 462.16 feet to an iron pin.

Q. Okay.

A. To an iron pin set.

Q. So, on that deed this line - -

THE COURT: Slow down. Hang on.

Q. On the Plaintiff's exhibit 3.

THE COURT: This line. Yes.

Q. The line starting in the northwest corner.

A. Right.

Q. Coming down to the hump in the driveway where Mr. Young's turn and the next line coming to the northwest corner of Parcel 2, (unintelligible) 1659580 of Leonard Dorsey.

A. No.

Q. That's the priority of calls correct?

A. No, he calls to that parcel but he has the specific line of division. So, if this was adversely possessed from that parcel, yeah, the land on the other side would be hers in that deed but the parcel wouldn't be hers anymore.

THE COURT: If you were on the west side of those lines? You're saying adversely possessing.

A. She's on the west side of the lines.

THE COURT: Are you saying if someone, Mr. Young in this case, adversely possessed on the west side, is that what you're talking about? West side of those property lines?

A. He possessed on the east side. So, if, if Fred

Frederick is making a call he's saying you go here to, he could have said the remaining lands of Jennifer Butts. You know, whatever. And he goes straight down and that's exact same line Fred found was the line that's in the Castle surveys, 416 I think it is.

Q. Okay. So, on that deed that you have in your hand, Plaintiff's exhibit 1, you testified earlier that the priority of calls, a call to a boundary takes precedent over courses and distances.

A. That's not a call to the boundary.

Q. So, it's your opinion that this deed doesn't call to a boundary?

A. My opinion is that - - My guess is that this strip was adversely possessed from Jennifer Butts' chain.

THE COURT: And when we say the strip, what strip are we talking about?

A. Parcel 3.

THE COURT: Okay.

Q. In deposition testimony do you remember covering whether there was tacking on Parcel 3?

A. No. There was no tacking on Parcel 3.

Q. Okay, so 1988 - -

THE COURT: Tacking meaning what?

Q. Oh, okay. Can you explain adverse possession tacking to the Court please?

A. Tacking with the guy before you says I've adversely possessed for the requisite period and identifies some numbers.

THE COURT: Okay, I just want to be sure I understood what how we were using the word.

A. Then you can tack on his claim to yours.

THE COURT: Understood.

Q. So, it's your opinion that Jeffrey Young seizing of the property started when he took title to the property?

A. Arguably for Parcel 3.

Q. How long does it take to (unintelligible) - -

A. Twenty years.

Q. Okay. So, until 2008 wherever Parcel 3 was remained in the original title holder, correct?

A. No, because he had the deed to it. They're two conflicting deeds.

Q. If I give you a deed to the White House do you get the White House?

THE COURT: Unless he's been living there for twenty years.

A. Well, you can't, you can't adversely possess government land so that wouldn't work.

THE COURT: It was just an - - I know, I know.

MR. HOLDER: I'm just - - If you give somebody - -

THE COURT: Actually, hang on Mr. Holder. That was a pretty good answer. (Laughter) But it was actually a really good question, too. I liked the question. Okay. Mr. Holder, take a breath.

MR. HOLDER: Okay.

THE COURT: Think about your next question before you ask it.

Q. So, there's no tacking on Parcel 3.

A. No.

Q. And the property in adverse possession changes instantly after twenty years.

A. Basically, yeah, you're claim is good against the whole world you end up in a case like this quieting title that you adversely possessed.

Q. Okay, but prior to 2008, who was the legal owner of Parcel 3?

A. He was. He got the - -

THE COURT: He who?

A. Mr. Young. He got deed to it in 1988.

Q. Okay. But what did that deed really transfer if Mr. Wickline didn't have the property in his title?

A. Well, it transferred any claim that he had. He didn't put tacking as to Parcel 3. I don't think he was concerned with Parcel 3 because it was of little value. The reason I think he put tacking on Parcel 2 was so that

there be no question that they had panhandle 2 be public road.

Q. In his Affidavit for Parcel 2 did he say he exclusively possessed Parcel 2?

A. Yeah. He identified all the - -

Q. You have the deed in front of you, sir.

A. I know. I know it. Actually, I'd forgotten that was in the deed until you pointed it out to me. He identified all of the elements of adverse possession.

THE COURT: Wait. On Parcel 1? Are we on Exhibit 1?

MR. HOLDER: We're on Exhibit 1. Page 111.

THE COURT: Okay.

MR. HOLDER: Bottom paragraph.

Q. Could you read where it says exclusive for me?

A. In an adverse exclusive continuous uninterrupted manner under claim of right since the date of their acquisition of the property from Roy Reeder and his wife by deed dated January 1, 1966, a period in excess of twenty-one years.

Q. Okay, and that affidavit gets tacked into Parcel 2?

A. Right.

Q. But there's no affidavit for Parcel 3 on the deed?

A. No, there's no affidavit for Parcel 3.

Q. So, again, could you, could you just explain to the Court what you're relying on in this deed that transfers property, real property and titled real property in Mr. Young when the title line, this lighter line to the right and it lines on Jennifer Butts' property, which you told me was prior to the (unintelligible). I'm just trying to understand your opinion.

A. Okay. I'm trying to understand your question.

THE COURT: I don't understand the question.

Q. Okay, what, what part of this deed transfers property - -

A. The description. The description and plat correspond to that.

Q. Did you allow the courses and distances to prevail under the call?

A. It doesn't matter what you do. He's saying I've got this land and he's describing it in his deed and on the plat.

Q. Okay, but if it's actually not in his title chain to his deed and you transfer property how is that - -

A. We know it wasn't in his title chain.

Q. Okay, so then how does he have the right to transfer the property through record title to Mr. Young?

A. Well, he was claiming he got a deed to it in 1966

through Mr. Reeder.

Q. What evidence do you have that Mr. Reeder had title to the property in 1966?

A. I don't have any evidence. That's why we're here for an adverse possession case.

Q. So, what are you basing your opinion on that Mr. Wickline had good title to Parcel 3 to transfer to Mr. Young in that deed?

A. I don't have to because Mr. Young has had it for over twenty-one years, he's in for thirty-three or thirty-four years.

Q. Yeah, but in 1988 - -

A. Right.

Q. I'm just going to try one more time.

A. Okay.

Q. When the deed was transferred from Mr. Wickline to Mr. Young, what evidence do you have that Mr. Wickline had to good title to Parcel 3 –

A. I don't have any.

Q. Okay.

A. I just have - -

MR. PEMBROKE: Objection.

A. - - it going back to 1966.

THE COURT: Overruled.

MR. HOLDER: Could I have my exhibit 4 back?

Q. I'm going to hand you back Justin Holder Exhibit 4.

A. Okay. I'm just trying to get myself organized here.

Q. Take your time. I didn't mean to get you all - -

A. That's okay. Okay.

Q. Look at page, what I have as (unintelligible) of that. Okay.

A. Okay.

Q. And you identified earlier a house by Kretzer and Baxter?

A. Right.

Q. And you identified a house by the name of JH Cost, which I right near maybe this limestone fence post would be today on Mr. Young's driveway?

A. No. Keedy not Cost.

Q. Mr., yeah, I'm sorry. Mr. Keedy's house.

A. Right.

Q. Is it JH Keedy on that?

A. Yeah, it shows a lane to Keedy's house, yeah.

Q. And it would be close to where Mr. Young now makes his turn. There's a limestone fence post in the general area?

A. I think so.

Q. Okay. And do you see a road on there for Mr.

Kretzer and Mr. Baxter to get to a public road?

A. Nope.

Q. Okay, and when that was drawn are you aware of any license or rights that they would have to get to a road?

A. Nope.

Q. In 1872 you're not aware of any license for Mr. Kretzer to use the road?

A. I think this is 1877, isn't it? 1877.

Q. The license you talked about earlier, do you remember 1872 you talked about a license.

A. The grant was in the nature of the license.

Q. Okay. So, who had the license? Did Baxter have the license?

A. Uh, oh, gosh, it gets really confusing back there. Apparently Kretzer was a speculator. He built house on speculation. Baxter got his by one deed and then a slice of land, apparently he didn't have enough, he got another slice of land. Where it went I don't know if this is all still owned by Cost, this doesn't show it, but it was still owned by Cost not by Keedy.

Q. Where Stonecrest is was owned by Cost at that time?

A. Right, but this, if you looked at this plat you think it was owned by Keedy and it wasn't.

Q. Okay. So, the railroad bisected the property of Cost at sometime when it came through, correct?

A. It just cut off that little tip where you all's property is.

Q. And that property is surrounded by the Antietam Creek?

A. Yeah, judging by this, yes, I think so.

Q. Okay, so they were getting out of there somehow. Is that a fair assumption?

A. Um hum.

Q. Okay. So, do you know of any license to use a road that they may have been using to get out of there?

A. Well, Antietam Drive was over Cost property so he might have left them use that.

Q. Do you have any evidence Antietam Drive was in existence? Is that on that map?

A. No, neither is the wagon road that you're talking about.

Q. Okay, I – -

A. In fact, if I look at this, it looks as if Keedy owns it, that land, and he didn't.

Q. I was just asking.

A. Yeah, sure.

Q. If you had any idea how they were getting to a public road in 1872 if that license could have got them

to - -

A. Well, the license or even if you call it a right-of-way could have taken them to Keedy's lane and Keedy could have given them permission. Apparently Keedy and Cost were brothers-in-law. So, it wouldn't be a surprise to let your brother-in-law to use your lane. But at some time probably, speculation, whoever owned the Keedy property somewhere in their chain they've said no. No more going over our lane. And that might be when Antietam Drive, that right-of-way was created.

Q. Do you have any evidence that Kretzer or Baxter had permission to drive over Keedy's lane?

A. Well, yeah, there's no - - I don't have evidence that there's permission. But I don't have - -

Q. Okay, that's all.

A. - - evidence that there was a right-of-way over Keedy's lane.

Q. I just asked that. I just wanted to know - -

A. Right.

Q. - - if you had any evidence that Keedy, or Kretzer or Baxter had - -

A. No, that's just pure speculation.

Q. Okay. And do you know when the first time you can see on a map Antietam Drive was going up? Do you know when that is?

A. No, I don't know.

MR. HOLDER: May I put a big exhibit up, Your Honor? This is one we agreed on Mr. Pembroke the eval map.

MR. PEMBROKE: Okay.

MR. HOLDER: Can you mark this as Defendant's exhibit 11 please. Can I just hand this to the witness first?

(Defendant Justin Holder exhibit 11 was marked for identification)

THE COURT: Yes.

MR. KLINE: Can you put it on the board?

THE COURT: Let Mr. Kline help you. Just leave that foam up and just attach it to the foam. (Exhibit 11 being displayed on easel) What exhibit number is this?

MR. HOLDER: This is Defense Justin Holder 11.

THE COURT: Okay.

MR. PEMBROKE: May I approach, Your Honor.

THE COURT: Yes. Do you all mind if I come down off the bench and look at this because I can't see it. (Counsel, witness and Judge step down to look at exhibit on easel in the Well)

MR. PEMBROKE: Court's indulgence.

THE COURT: Yes.

Q. Do you recognize this evaluation map? Did you review it?

A. I saw a part that was emailed to me but I couldn't understand why. I didn't see any relevance to it.

Q. Okay, and is this one of the exhibits Mr. Pembroke that we agreed on?

MR. PEMBROKE: It is, with respect to authenticity.

THE COURT: Correct. That it's authentic.

MR. HOLDER: Can I move to admit it as a (unintelligible) exhibit.

MR. PEMBROKE: Well, Your Honor, I would object to the admissibility based on relevance.

THE COURT: Okay. There's two things with it (unintelligible). Number one, it has to be authentic and genuine. That's what he's saying it is. He doesn't think you made this up. Second though, it has to be relevant and witnesses indicated he found this exhibit to be irrelevant to his determination. So, your request is denied.

MR. HOLDER: Okay, can I ask him a question about it?

THE COURT: You may.

Q. Okay, Mr. Joliet, you mentioned a picture with just a private road and it wasn't a public road. Did you see that - -

A. You mean on the 1877 atlas?

Q. On the evaluation map. It's like - -

THE COURT: Which evaluation map?

Q. This evaluation map here, this right-of-way and tract map.

MR. PEMBROKE: Objection.

THE COURT: Your question was that he mentioned that a private lane rather than a public lane.

MR. HOLDER: Yeah, in Mr. Pembroke's pre-trial statement about your testimony he said there's a private road label.

THE COURT: Well, if he hasn't testified to it today, pre-trial statement is not evidence.

MR. HOLDER: I know.

THE COURT: Okay. If he didn't testify to that yesterday or today then - -

Q. So, you never, you never looked at this?

THE COURT: You can't ask that question.

A. I did look at it. But I didn't see the relevance.

MR. PEMBROKE: Objection.

A. I'm sorry.

THE COURT: It's the same answer. He finds it to not be relevant to his opinions.

MR. HOLDER: Okay. (Counsel, witness and judge return to tables?

MS. PEEPLES: Your Honor?

THE COURT: Yes.

MS. PEEPLES: May we take a five minute nature break?

THE COURT: Yes. I think that's a - - I was going to stop at 10:30 but if this is a good time let's do that.

MR. HOLDER: I'll keep these up here.

THE COURT: Okay. Yes. Let's take five minutes, give Mr. Holder a chance to get organized an then we'll continue. Okay. Five minutes.

(Whereupon at 10:24 a.m. court was in recess and resumed at 10:32 a.m. and the following occurred in open court with cross examination by Mr. Holder:)

THE COURT: Everybody have a seat please. Mr. Holder. Yes, sir.

Q. Mr. Joliet, when is the first factual evidence that you have that Baxter and Kretzer or their successors in interest were using, were turning right and going out to Main Street?

A. Oh, I don't know when they started Antietam Drive.

Q. Is there any maps that you are aware of when you were doing your research and they show that they can turn right?

A. Uh, I know on the Stonecrest plat they show right-of-way over Antietam Drive. It's 8294. Maybe that's it.

MR. PEMBROKE: That was not enlarged.
THE COURT: Which one?
MR. PEMBROKE: 8294 Stonecrest plat.
MR. HOLDER: You don't have that one enlarged? I think I have a copy.
THE COURT: No, no. If it's already in evidence use the one that's in evidence.
Q. Okay. Yea, do you have a copy of the 1894 plat?
THE COURT: Hang on a second. We'll find it. Are you sure it's 1894 or 1893?
A. I'm not sure.
THE COURT: Show that to Mr. Pembroke. Show that to Mr. Pembroke.
MR. HOLDER: Oh, I'm sorry.
THE COURT: Isn't that the plat you're - - Is that what you're thinking about?
MR. PEMBROKE: Well, that - - Well the enlargements are 8292 and 8293.
THE COURT: Right.
A. Well, it might on - -
THE COURT: Is that the one you wanted Mr. Holder?
MR. HOLDER: He said 94 but I think he meant - -
A. I can't remember the numbers.
THE COURT: Okay, why don't we start with 8293 then.
Q. Do you see a way for them to turn right on this

exhibit, uh, Plaintiff's exhibit number 13?

A. Can I come down?

Q. Sure. (Witness steps down to easel)

THE COURT: Let's - - Let me ask a quick question. I just want to be sure. Mr. Joliet, the two parcels, the two people that you're talking about back from that Washington County atlas Kretzer, is that one of the names?

MR. HOLDER: Yes.

THE COURT: What's the other name?

MR. HOLDER: Baxter.

THE COURT: Mr. Joliet, are Kretzer and Baxter predecessors to - -

A. Yes.

THE COURT: - - Deena Holder's properties and Uncle Eddie's properties?

A. Yes.

THE COURT: Kretzer and who, what's the name?

A. Baxter.

THE COURT: Kretzer and Baxter. Okay. Go ahead.

Q. Okay, so, is this, is this Plat 8293 the first factual evidence you have that they could come out of there, come out across the railbed, turn right and go to Main Street?

A. I don't know about the factual evidence but I

mean I can see it on there. It was from the Holder - - Again, I'm calling them all Holder. Holder existing drive right across there. And then the right-of-way, the easement license, whatever you want to call it, isn't shown on here. It would go along here and end right there.

THE COURT: Hang on a second. You just pointed and I want to make sure - -

A. Oh, I'm sorry.

THE COURT: - - that I'm clear. Hang on, hang on. Are you pointing - -

A. Over the forest conservation area.

THE COURT: So, hang on, slow down, slow down. You're saying that the wagon lane - -

A. Wagon Road, yeah.

THE COURT: Okay. But it's called the Wagon Lane. Fair?

A. Okay.

MR. KLINE: I think road would be more appropriate.

THE COURT: Fine.

MR. KLINE: It's called that everywhere.

THE COURT: Is it called that in the deed 1872?

MR. KLINE: Yes, yes.

MR. PEMBROKE: Yes.

A. But - -

THE COURT: Okay, and I want to be sure about something. And I hate to jump in but this is something -- He's pointing to it so I need to be clear. The 1872 deed that indicates that they're reserving a wagon road.

A. Right.

THE COURT: Okay. The wagon road is described in that deed where it is?

A. Up to this point.

THE COURT: Okay. And so, in the description in 1872 are you indicating to me that the wagon road went through the forest conservation easement on plat 8293?

A. Yes, it would go on a eastfully direction, well I guess in southern direction, over the forest conservation.

THE COURT: Over it? Through it?

A. Through it.

THE COURT: You're pointing to the exact property line. Are you saying that the road was actually inside the forest conservation easement?

A. Yes.

THE COURT: Okay.

A. Wagon road, whatever you want to call it.

THE COURT: Then where would - - Okay. Then where did the wagon road go when it left the forest conservation easement?

A. It would go - - It doesn't have a width to it but I would probably go over lot 9 and maybe part of lot 10. And then it looks as if it would go over our Parcel 3 where our Parcel 3 ends and Parcel 1.

THE COURT: Okay. And so, it would go through the forest conservation easement, through Lot 9 of the Stonecrest Development at the back edge of that lot.

A. Right.

THE COURT: Through Lot 10 a little bit at the back corner of that lot.

A. Probably, yeah.

THE COURT: And then down Parcel 3 to the south. Although Parcel 3 is not shown on 8293, is that right?

A. It's not shown, actually shown on it.

THE COURT: But you believe - - You believe the description in the 1872 deed would have put it into Parcel 3?

A. I'm guessing.

THE COURT: And then where would it have stopped? Would it have stopped there at the - -

A. It would have stopped here at the end.

THE COURT: Of Lot 15 or did it go all the way down to - -

A. Lot 14.

THE COURT: - - Mr. Young's turn?

A. No. It went to, uh, Mr. Young's - -

THE COURT: Hang on.

A. - - Parcel 1.

THE COURT: Okay. Stop. Can you get up on there plat 8292? Okay. Go ahead and put it on the easel. Where do you believe that the - -

A. Right here.

THE COURT: - - wagon road ended on as described in the 1872 deed?

A. Right there.

THE COURT: Okay. And right there you are pointing on plat 8292 to the back corner of lot 14.

A. That's correct.

THE COURT: And what I call the turn.

A. Yeah.

THE COURT: Mr. Young's turn.

A. I don't think that you can say that.

THE COURT: Okay. Based on the description in the 1872 deed you believe that the wagon road did not then go down the panhandle - -

A. No.

THE COURT: - - behind what is now lots 14, 15 16 in the park area?

A. No.

THE COURT: Okay.

A. I mean that's - - I saw a survey from their surveyor and that's where he puts it too.

THE COURT: Okay.

A. Um, it was a drawing by Mr. Nagle that has it end there.

THE COURT: At the turn?

A. At the turn. Whether it was road or plat, whether it was road or lane it doesn't matter, you can use them interchangeably.

THE COURT: I'll call it the wagon road. That's fair.

A. Yeah, I mean it doesn't matter. Obviously it was private road, private lane, whatever. Or you wouldn't have gotten had to give permission to use it.

THE COURT: Understood. Mr. Holder, I'm sorry for jumping in on that.

MR. HOLDER: No.

THE COURT: But I'm trying to - - I just want to be sure that I know where Baxter is where Kretzer is where Keedy is and what the 1872 deed says and where it says it was, okay? That's why I asked those questions.

MR. HOLDER: I do, and, you know, we've lived here all of our lives so we just, it's hard sometimes to break it down. So, I apologize if I'm not being specifically clear.

THE COURT: No. You don't have to apologize. That's one hundred percent fair, I get it. Okay.

Q. Okay, so, this wagon road have you located any monuments in the back of - - Have you ever inspected the property in the back of lots 7, 8, 9 in the forest conservation shown here on plat 8292 Plaintiff's exhibit 13?

A. I rely on your Mr. Nagle. He said he found where it would go. I'm not sure - -

Q. I'm just asking you. Were you ever on this part of plat 8292 physically located where Mr. Young says there was a road that dead-ended it his north end of Parcel 3?

A. I didn't know he said there was a road that dead-ended to his Parcel 3.

Q. Were you in the courtroom for his testimony?

A. Yeah, I didn't hear that.

Q. Okay. So, have you ever walked behind lot 9 the Morrals, in this crosshatched area right here? Have you ever been in that area?

A. Yeah, I walked all the way up to where your property is. Now, I didn't see a road.

THE COURT: Hang on, hang on. You're saying the Morrals? It doesn't say Morral on that exhibit. You mean Lot 9.

MR. HOLDER: Lot 9.
THE COURT: Lot 9. Okay.
MR. HOLDER: Lot 9.
Q. So, you've walked from lot 9 down.
A. Yeah.
Q. And when did you do that?
A. Uh, you know I can't tell you exactly. I'm guessing the leaves were off the trees and I'm guessing it was in 2020. I had an accident in 2019 and I know I wouldn't have done it in 2019. It would have to be in - -
Q. When you walked it was it the same day you walked on Parcel 3?
A. Yeah.
Q. Okay, was Parcel 3 cleared and - -
A. No.
Q. It was not?
A. I was still recovering from my accident and I had a hard time walking anywhere. I fell on my face. I had brain injury.
Q. So - - I'm sorry to hear that. When did you recover from that brain - - Do you have approximate date?
A. I'm still recovering.
Q. Okay, when were you back at work from that?
A. A couple months later. So, it was in February of

’19, I was off for a couple months. And then I came back but it took a while.

Q. And you said you were on the property of Mr. Young in the Fall when the leaves were off the trees?

A. Yes, the leaves were off the trees.

Q. And he called you because of the dispute we were having?

A. I think I went out with Mr. Pembroke. I went out when I got a chance and I was supposed to go out there with Mr. Pembroke and either I had the opportunity the go out to Keedysville, whatever, I went out, you know.

Q. Okay, but were you ever out to the property prior to me and Mr. Young getting into a dispute ro.

A. No.

Q. Okay.

A. No, I never saw.

Q. Okay, so when you were out here and were you in court when we testified that the dispute was me taking my agents in a bobcat and clearing Parcel 3?

A. Yea, he said you wouldn’t stay off his property.

Q. Okay, so when, so I’m just going back. So, when you came out to walk and you walked up Parcel 3 I had already been, I had already been on there with a bobcat.

A. Well, you didn’t do a very good job. But, you know, be that as it may.

THE COURT: Are we trying to establish the date that he went out?

MR. HOLDER: I'm trying to establish the date - -

THE COURT: Okay, I think the confusion here is that the conversation began suggesting that it was in the Fall of 2019. The dispute between Mr. Young and Mr. Holder according to prior testimony did not really start until the Spring of 2020 when Mr. Holder through his agents went out with the bobcat and the chainsaw. Would you have been involved in this case Mr. Joliet at all before the bobcat chainsaw of the Spring of 2020?

A. No.

Q. So, it could not have been the Fall of 2019, that you were out there?

A. No.

Q. Because that would have been before the chainsaws.

A. Well, it wouldn't have been 2019 because I wasn't really - -

THE COURT: You were injured.

A. Yeah. I wasn't really - -

THE COURT: So, isn't it more appropriate to think that you were probably out there in the Fall of 2020?

A. That makes sense.

THE COURT: Okay.

A. Yes.

THE COURT: Is that where you're trying to get to?

MR. HOLDER: Yes, that's perfect.

THE COURT: Go ahead.

Q. Okay. So, you examined this property, this crosshatched area - -

THE COURT: Call it by lot number.

Q. Behind lot number 9 that identifies no permanent structure since trees or shrubs are permitted within water stream drain drainages stormwater management and access easements and notes can be placed on any deed or conveyance. You were, you walked through that area?

A. No, I didn't walk on their lots.

Q. Okay, how did you get down - - Where did you walk?

A. I walked from the end of Parcel 3 up to the forest conservation, through the forest conservation area and then I saw what is Antietam Drive and I stopped there.

Q. How, how wide was the path you walked on through there?

A. It places on forest conservation area it was pretty not really a path. Some of it was cleared off. And I don't know where the forest conservation area ended and the park service land began. I'm not sure.

Q. So, you didn't identify any of these monuments when you walked down through there?

A. No, no, no. I did see Antietam Drive. That's all I saw.

Q. If you grant someone an easement and somebody grants somebody else an easement subsequent to it would one be junior and one be senior?

A. Um, okay. You're saying if I grant somebody an easement over my ground and then I get somebody else my ground.

Q. Yea, whose easement gets priority? The first one or the second one?

A. I don't think there is any priority. They both have access.

Q. They both have - - Okay. Same would be true with the stormwater forest conservation easement? Neither one cancels. They don't extinguish each other. They just usually exist together?

A. I don't know. I can't say. I did talk to the lady over at the forest conservation area and I her last name begins with a B and she's up at the County building. I happen to be over at the County building. She said no they wouldn't grant.

MS. PEEPLES: Objection.

THE COURT: Sustained. It's hearsay.

Q. Okay, so, it's your testimony prior to producing this plat, you have no evidence that Baxter and Kretzer were their predecessors who ended up being Uncle Eddies and Deena Holder were turning right to get to Main Street?

A. No, I don't know how they're getting to Main Street.

Q. Okay. And prior to that you knew they had a right to turn left go up through what's now is forest conservation you believe, down through Parcel 3, and then a right stop at Mr. Young's driveway and for a period of a hundred and fifty years they drove over Mr. Young's driveway to get to Dogstreet.

A. I don't know that.

Q. Do you have any evidence they were getting out any other way than this road they were granted?

A. I don't know how long Antietam Drive existed. It certainly existed long before the Stonecrest subdivision was in existence.

Q. Antietam Drive right here?

A. Yeah, it wasn't created for the Antietam. It wasn't created for Stonecrest.

Q. How did they get from the end of this Antietam Drive?

A. Beats me.

Q. Okay. Do they have permission? Is there a right-of-way?

MR. PEMBROKE: Objection.

A. I don't know.

THE COURT: Overruled.

Q. I'm just saying - -

THE COURT: He doesn't know.

Q. Okay. So, you don't know how they get from the end of this to Antietam Drive?

THE COURT: And you're saying the end of this you mean?

MR. HOLDER: The end of this - -

THE COURT: The northern - -

MR. HOLDER: This 10 foot access easement here the northern - -

THE COURT: Well, it' western.

MR. HOLDER: Okay, yeah, western portion.

A. I drove up there once and I think it's over back lane, back alley in Keedysville.

Q. Are you aware of any right-of-way that now or formally Thompson or now formally Griffith (unintelligible), the Hutzells or Uncle Eddies and Deena or the public to travel across their property?

A. I thought it was public alley. I don't know.

Q. What evidence do you have that it's a public

alley?

A. Driving down it and it was posted. I don't know.

Q. Did you see any No Trespassing signs posted here?

A. Never saw them.

Q. Okay. Did anybody stop you and say, hey, you don't have permission, you can't do it?

A. Nope. I had no problem at all.

Q. Just drove right through?

A. No problem.

Q. How many times have you done that?

A. Once.

Q. Okay, and that was in 2020, when you visited the property?

A. It was the same time I visited the property.

Q. Okay, so prior to 2020, prior to Stonecrest, what evidence do you have that you could access these properties?

A. I wouldn't have any reason to look for it.

Q. Okay. So, your answer is you have no evidence?

A. I haven't tried to find it.

Q. Okay. Are you familiar with another plat of Stonecrest that doesn't have Mr. Young's name here at Maryland Department of Natural Resources on it I introduced into evidence to Mr. Young?

THE COURT: You're pointing at the 8293 plat where it

indicates Mr. Young, you're asking if there's another plat that shows somebody else as the owner. Are you familiar with that plat?

A. Yes.

THE COURT: His answer was yes, he knows the plat, okay.

Q. Is this the plat you're familiar with?

A. It's 100 something.

THE COURT: 10943 I think.

A. This is 10650. In fact, I see my handwriting on it.

THE COURT: Is that already in evidence?

MR. HOLDER: That's already in evidence. That's Justin Holder exhibit number 5, is that correct?

A. Yes.

Q. Okay.

THE COURT: Okay, so JH - -

A. It's got my handwriting on it. So, this isn't certified but, hey, that's okay with me.

Q. That was produced to you in part of your work product?

A. I found it.

Q. What did you write on it?

A. Purpose was to replat lot number 1.

Q. Okay.

A. They wanted to change I think lot 1 at the entrance of Stonecrest to move it on the other side and move what was park reserve.

Q. Okay. That is - - Jeffrey Young's name is not on this plat as being to the west as it is down here, or I'm sorry, to the east of - -

A. No, they made a mistake. They made a horrible mistake on it. But they - -

Q. What evidence do you have that they made a mistake?

A. Well, this plat and I've got my own eyes, they say that partnership owns land all the way up to here. They never did.

THE COURT: Up to here where?

A. I think they say the partnership owns land - -

THE COURT: I'm sorry? Hang on. Hang on Mr. Joliet.

A. I'm sorry.

MS. PEEPLES: Who is they?

MR. KLINE: Who's they?

A. That plat.

MR. KLINE: They is the plat?

THE COURT: I think that's what he's saying.

A. That plat 10 - -

THE COURT: The plat shows, plat 10650 shows what Mr. Joliet?

A. It shows the partnership owning this I think and then the park service owning this which is way off. But I think they were way off because they - -

THE COURT: So, to be more accurate - -

MR. KLINE: Objection.

THE COURT: - - the partnership owns - - I can look at the plat. Give me the plat. What's the objection?

MR. KLINE: Objection is what he is speculating the forestry department and the partnership meant with respect to the plat.

A. I'm not speculating at all.

THE COURT: Oh, I don't think the partnership or the forestry had anything to do with the preparation of this plat.

MR. KLINE: Yeah, but he was going to I think opine as to what they meant. He just said the partnership and the converse - -

THE COURT: Conservation.

MR. KLINE: Thank you. We're going to do something - -

A. No, that's not it at all.

THE COURT: I don't think that's what he was saying. Objection is overruled.

MR. KLINE: Okay.

THE COURT: Okay. I'm looking at Justin Holder

exhibit number 5. This is plat number 10650, one of the plats of Washington County. It shows the backend, I'll call it the northern half of the Stonecrest development. It appears to be a replat of the Stonecrest development. I'm not sure if there's another plat to this?

A. There is.

THE COURT: I think my recollection is this one was filed by Dan Ryan Builders. But, neither here nor there. And on this plat, Mr. Holder's point is there seems to be information on this plat that actually the owner of the Young land is a company called The Partnership. Is that what you're asking?

MR. HOLDER: I'm just trying to figure out what these names along, you know, outside too. So, I just - -

THE COURT: Do you have a question for Mr. Joliet?

MR. HOLDER: I do, yeah.

Q. So, are you aware the plat 8292 was done without any title work?

A. Well, I'm not aware of that. But I - -

Q. Is there a note on the plat? Did you read a note?

A. Yes, but I can't imagine that they did that. I'm not sure that's definitely what they said. Uh, you can't do this without doing title work. You can't do a plat without doing title work.

Q. Do you have experience in surveying to make that determination?

A. Yeah, I've got enough experience that I've done enough real estate that I know you have to have something to plat out.

Q. Did Mr. Frederick tell you that he did plat 2499 with no title work?

MR. PEMBROKE: Objection.

THE COURT: Overrule - - Or sustained.

Q. Okay.

A. The thing is that plat was done for another purpose. So, the guy that did that plat who wasn't this one he didn't really care about this. He cared about lot 1, which is on the other plat.

THE COURT: You're saying the guy, the guy who drafted plat 10650 - -

A. I think that was Fox.

THE COURT: Okay. You're suggesting they were more interested in plat 1, lot 1 than they were anything else?

A. Well, that's it says. It was replatted for that.

Q. What evidence do you have that leads you to that conclusion?

A. The language on the those two plats, there's two plats together. One plat shows where the lot 1 was changed. And that's at the entrance to Stonecrest.

Q. Is there any other evidence on there why they would have changed any names adjoining boundaries, anything like that?

A. They didn't change anything. They held all the same lines. They just said this was The Partnership instead of, instead of Young.

Q. Or Natural Resources?

A. And Natural Resources, which wasn't anywhere around it.

Q. Okay, would you consider that to be a hostile outstanding claim of the land records against Mr. Young's title?

A. No.

Q. Okay. Then why should Gary Castle or anybody consider this to be a hostile outstanding claim on the land records - -

THE COURT: And when you're pointing, you're pointing to this?

Q. I'm pointing to where it says NF Young on this plat. Why should I think that's an outstanding claim against Jennifer Butts' land on this property?

A. Because Castle who was a registered surveyor in addition to developing Stonecrest held this line, the same line, that you see in plat 2499, the exact same line and he said anything on the outside of this line and he

shows a fence belongs to Young. He also shows Young's corner up here.

Q. Does he grant it to Young? Does this plat grant land to Young?

A. No. He recognizes it. Young owns it.

Q. Can he grant land with a plat?

A. He's not granting land.

Q. Okay.

A. He's recognizing that Young owns it.

MS. PEEPLES: Your Honor?

THE COURT: What?

MS. PEEPLES: I'm just going to object to the fact that he's testifying to what Gary Castle meant by a plat.

MR. PEMBROKE: Your Honor, as an expert I think he can - -

THE COURT: No, Mr. Holder asked the question. And it was a simple question. It was more not so much of what Mr. Castle did but his question was can an owner grant land with a plat and the answer is no.

MS. PEEPLES: Okay.

Q. Okay. So, when you identified where the wagon road went you knew it went over parcel 3, correct?

A. I don't know that. I'm using your surveyor's drawing to come to that conclusion. And I know some of the Butts' chain some of it calls to a private road.

Q. And you're pointing towards the private road that goes - -

A. This line.

Q. - - down and connects with Mr. Young, what he's using now as his driveway?

A. Well, he's always used his driveway and his chain calls that a lane not a road.

Q. Okay, and you know that this line - -

THE COURT: Hang on.

MR. PEMBROKE: Excuse me.

Q. I'm going to put exhibit 8 back up on the board, okay.

THE COURT: Yes. When we're moving boards let's be sure that we identify which board we're looking at. So, now we're on exhibit what?

Q. So, exhibit 8, Plaintiff's exhibit 8, folio 778 of the, I'm sorry, Reeder to Wickline deed. There's a planted stone.

A. Yeah.

Q. And do you believe that that stone is the Cost Keedy division line as it existed when the wagon road was granted? Is that why you think it goes over parcel 3?

A. It's just supposition but it makes sense.

Q. Okay. Do you have any evidence it wasn't?

A. No.

Q. Okay. Mr. Joliet, thank you for your time.

**END OF CROSS EXAMINATION BY MR. HOLDER**

THE COURT: Does any other defense counsel have questions?

MS. PEEPLES: Yes, Your Honor.

**CROSS EXAMINATION**

BY MS. PEEPLES:

Q. May I see Plaintiff's exhibit number 13 please?

THE COURT: Which plat are you looking for Ms. Peeples?

MS. PEEPLES: I'm looking for 8293. There is an additional page, it's 8294 - -

A. It might be down there.

MS. PEEPLES: 8295.

MR. PEMBROKE: Those were not enlarged.

MR. HOLDER: Those are in the small version.

MS. PEEPLES: Okay.

THE COURT: So, you need 8295?

MS. PEEPLES: 8295.

THE COURT: Mr. Clerk, it's one of the smaller ones. Ms. Peeples, before you start questioning can I look at that?

MS. PEEPLES: Yes, sir.

THE COURT: I just want to be sure I'm looking, I know what you're looking at. Okay.

Q. Mr. Joliet - - May I question?

THE COURT: Yes.

Q. What I'm showing you has been previously admitted into evidence by the Plaintiff as exhibit number 13. I believe it's a collection of a multiple page plat.

A. Okay.

Q. Can you refer to the notes please, at the bottom of the page?

A. Uh, yes.

Q. Can you read note 4 please?

A. This plat and survey were prepared without benefit of a title report furnished and therefore may not necessarily indicate all encumbrances on this property.

Q. Yesterday you testified that because there were no indication of any wagon road on this plat that the property was not - -

A. Yeah. Encumbrances I read to be mortgages, liens or whatever. If you read up in the certification he says there were no rights of way or easements not showing on the plats. So, on the face it seems to contradict but if you understand encumbrances to be encumbrances. Here's an enlarged proportion of the plat. See what's highlighted.

Q. You don't know if he made a mistake then?

A. Doesn't look like he made a mistake to me.

Q. Would you - - You wouldn't find an easement as an encumbrance?

A. No, not in this, not in this context.

Q. Maryland law wouldn't find an easement as an encumbrance?

A. I don't care about Maryland law. He's saying there's no easements or rights-of-way not showing on the plat in one place and then not any encumbrances. I take not any encumbrances to mean mortgages or liens.

Q. But you've never had any conversation with anybody who prepared this plat?

A. No.

Q. And you then sitting here today don't know the intention as to whether that line was a mistake and or whether encumbrances meant actual easement or right-of-way based upon the language in the plat?

A. I know it doesn't look like a mistake to me.

Q. Well, the plat is inconsistent, would you agree?

A. No. I think it's perfectly consistent.

Q. And your basis for the opinion as to what he meant when there were no encumbrances is what?

A. Encumbrances would be a lien or a mortgage.

Q. You're still aware though that under Maryland law easements can be considered an encumbrance, correct?

A. Yeah, but they're not, that's not in this

context. And his plats don't show anything else. If he thought there was a, if there was any evidence of a wagon road there he would have shown it.

Q. When you prepare a title report what kinds of things are you looking for in a title report?

A. Liens and encumbrances, yes.

Q. So - -

A. Rights-of-way.

Q. So, when he says in that plat this was prepared without the benefit of a title report, a title report would have shown liens and encumbrances, correct?

A. Yes.

Q. So, therefore if a title report is all encompassing of liens and encumbrances on a property and the plat was prepared without a benefit of the title work for it then whoever prepared the plat wouldn't know whether or not to indicate any easement on the property?

A. I think he's just talking about liens and encumbrances meaning mortgages or liens. Alright, he, he would - -

Q. But you just said a title report.

A. - - have to do - - If he, even if he did a title report on this the Cost wagon road wouldn't show up. That was in 1872. There's no evidence of any, there's no mention of a wagon road in the Stonecrest chain. He'd

have to go back to 1872, which is an out conveyance and most people that do title searches even for this don't go back that far.

Q. What's the normal years in a title report that someone will go back?

A. Sixty years. They usually go back a hundred years just because I, I'm compulsive.

Q. So, sitting here today, let's talk about adverse possession. You testified in deposition and you testified in trial as to adverse possession and that Mr. Young acquired his property parcels 2 and 3 by his predecessors and title having adversely possessed it.

MR. PEMBROKE: Your Honor, I'm going to raise an objection.

A. That's not what I said.

THE COURT: I'm not even sure she's finished her question yet though.

MS. PEEPLES: No.

THE COURT: What is your objection going to be?

MR. PEMBROKE: Well, my objection is along the lines of a standing issue because her client is not contesting the ownership of the property. Her client is only saying that she has a right-of-way over the property. So, that's really not an issue for her client in this case.

THE COURT: Well, except to the degree that I might

find that there's adverse - - I could find that there's been adverse possession of parcel 3 and therefore the lane is gone. Doesn't adverse possession terminate an easement?

MR. PEMBROKE: Yes, sir, it would.

THE COURT: Okay, she's asking about adverse possession. Her client is claiming and easement. I'll allow her to finish her question at least.

MR. PEMBROKE: My apologies.

THE COURT: It's okay, Mr. Pembroke.

MS. PEEPLES: Respectfully, Your Honor, there are a couple of questions that deal with adverse possession in parcel 3 but nevertheless my questioning goes directly to the lane, the existence of.

THE COURT: Fair.

Q. So, you, you testified that Mr. Young's predecessor in title when it concerns the Butts' property and other aspects of parcels 2 and 3 were procured by adverse possession.

A. By Mr. Young's adverse possession. It looks as if Reeder had been adversely possessing too and he gave all his right, title and interest in them. But, I would say a good concrete title starts with the adverse possession of Mr. Young.

Q. So, in terms of adverse possession for purposes

of the Court, how do you define adverse possession?

THE COURT: I'll define it.

Q. Okay.

THE COURT: Your objection is sustained. That's the final issue. I don't need the expert to define adverse possession for me.

Q. So, let me ask you a hypothetical then for purposes of this case that kind of parallels this. I own a piece of property knows as parcel a. And you come along and you deed part of my property to somebody in a property transfer. Does the fact that you've deeded part of my parcel a to somebody else in your expert legal opinion constitute adverse possession.

A. Part of it. It's color of title.

Q. So, even though that you didn't have permission from me to deed part of my parcel to somebody else?

A. It's what adverse possession is all about.

Q. So, if I'm sitting here and I don't know that you've deeded part of my parcel a to somebody else that's adverse possession?

A. You'd have every reason to know it. There's a deed on the record, there's a plat on the record. You're not possessing it yourself. You don't object to me possessing it, me using it.

Q. How am I to know if you've ever deeded it if I'm

not on notice of you actually claiming ownership of that property?

A. Tax records show it. At one point, in I think 2004 or '05, there's a plat showing you don't own it. You own the property, the Stonecrest property and you identified me and my plat as owning it.

Q. So, what's - - Who's to stop any one person then from walking in and saying, well I own half of my neighbor's property I'm going deed half of my neighbor's property to somebody else without my neighbor's knowledge. How can you say that constitutes adverse possession?

A. I didn't say that constitutes adverse possession.

Q. Do you - - Are you aware of any case law in Maryland that suggests that just transferring property by a deed constitutes adverse possession?

A. That's color of title but that's a part of adverse possession.

Q. How do you know that Reeder adversely possessed the property?

A. I don't. I don't have any evidence. It just looks that way to me.

Q. So, is it fair to say then if you have no evidence that Reeder adversely possessed the parcels that he transferred to Young?

MR. PEMBROKE: Objection.
A. He didn't transfer it to Young.
THE COURT: Hang on. Hang on.
A. He transferred it to Wickline.
Q. To Wickline.
THE COURT: Okay. Overruled.
Q. I'm oversimplifying. So, if you have no evidence that the parcels that you supposed were acquired by adverse possession in Mr. Young's title chain - -
A. Right.
THE COURT: Are we talking about parcel 2 and 3 or only parcel 3?
MS. PEEPLES: Both.
THE COURT: Well, let's stop here a minute then.
MS. PEEPLES: Okay.
THE COURT: We had a pre-trial conference that you did not attend. At that pre-trial conference Mr. Holder, at least, indicated that he was not questioning title to parcel 2.
MS. PEEPLES: Okay, then parcel 3, I apologize.
THE COURT: I want to give the defense an opportunity to tell me that's what Mr. Holder told me. Are any of the defendants contesting title to parcel 2?
MS. PEEPLES: No.
MR. HOLDER: No. The Jennifer Butts quick claim

perfected it.

THE COURT: That's fine.

MR. KLINE: No, on behalf of Uncle Eddie's, Your Honor.

THE COURT: Okay.

MS. PEEPLES: I'll withdraw the question.

THE COURT: Okay, when we're talking about the parcels that we're talking about adverse possession on we are only talking about parcel 3, is that correct, Ms. Peeples?

MS. PEEPLES: That is correct, Your Honor.

THE COURT: Is that correct, Mr. Kline?

MR. KLINE: Yes, Your Honor.

THE COURT: Is that correct, Mr. Holder?

MR. HOLDER: That is absolutely correct, Your Honor.

THE COURT: Very good.

MS. PEEPLES: I apologize for the misspoken.

THE COURT: No, no, no. It's okay. I fully understand. It was a conversation we had at the pre-trial that you were unable to make because of a prior commitment. I understand.

MS. PEEPLES: I was in trial in another matter, I apologize.

THE COURT: I know you were. It's okay. So, that I'm clear, okay. Ownership of parcel 2 is no longer an

issue in this case, right?

MS. PEEPLES: Correct.

MR. HOLDER: Correct.

Q. Talking about parcel 3 only, in Mr. Young's title chain, sitting here today do you have any actual evidence that Reeder adversely possessed - -

A. No.

THE COURT: I think he's answered that about four times now.

MS. PEEPLES: I'm sorry.

THE COURT: That's okay.

Q. Did you plat out in your preparation of opinions for trial today, did you plat out where the wagon road based on its description in the 1872 deed where it would go or did you rely on - -

A. I relied on your guy.

THE COURT: Your guy meaning your expert?

A. Your expert, Nagle.

THE COURT: Mr. Nagle.

Q. Court's indulgence, Your Honor.

THE COURT: You're fine.

MS. PEEPLES: Your Honor, may I approach?

THE COURT: Yes.

MS. PEEPLES. This was not admitted yesterday. Mr. Pembroke tried to add it in and the Court just got this.

I had typed this out based upon my review of the deed and I think it will assist the Court in actually seeing the wagon road description.

THE COURT: May I have both of them?

MS. PEEPLES: Good because I wrote myself a note last night that said if you all think that I'm going to be able to read an 1872 deed in old cursive you're dreaming. (Laughter)

MS. PEEPLES: I anticipated your question, Your Honor.

THE COURT: Are you asking that these be presented as evidence recognizing they are, and I recognize what they are, the big one is Mr. Joliet's office reading the old cursive deed - -

A. That's right.

THE COURT: - - and doing their best to translate it.

MS. PEEPLES: That's correct.

THE COURT: And do the type written form.

MS. PEEPLES: That's correct, Your Honor.

THE COURT: The smaller version is what?

MS. PEEPLES: It is what I did my best in reading the cursive deed and typed the portion of Mr. Joliet's portion which relates to the wagon road.

THE COURT: Beginning at the words, the said, "Aaron Cost and Melinda Cost do hereby grant," and ending with

the words, "Martin Eakles' Mill."

MS. PEEPLES: Yes.

THE COURT: So, somewhere in the big version I will find this small version?

MS. PEEPLES: That is correct.

THE COURT: Is there any difference between what he thought it said and what you thought it said?

MS. PEEPLES: I don't believe so. I thought it matched.

THE COURT: Oh. Wonderful. Is there any objection from the Plaintiff if I make this an exhibit? The alternative is just to make it demonstrative but I guarantee all of you I have to read these because - -

MR. PEMBROKE: Well, Your Honor - -

THE COURT: - - I'm not going to decipher a cursive deed.

MR. PEMBROKE: My only comment is I wouldn't, I wouldn't think both are necessary.

THE COURT: I don't mind having both. I'll staple them together. Well, I'll see what the clerk - -

MS. PEEPLES: One is the full conveyance and one is the wagon road. I didn't - -

THE COURT: I'd rather have both of them if there's no objection.

MR. PEMBROKE: There's no objection.

THE COURT: Is there any objection from either of the defendants?

MR. PEMBROKE: No, Your Honor.

MR. HOLDER: No, Your Honor.

THE COURT: Okay. Shall we make this a Deena Holder exhibit? Is that what you're asking for?

MS. PEEPLES: Yes, please.

THE COURT: Okay. Mr. Clerk, why don't we do them separately, separate numbers, okay.

MS. PEEPLES: Do you want a copy of that Mr. Joliet?

THE COURT: We'll give him the actual exhibit here.

A. I've got a copy of the plat.

THE COURT: We will give him the exhibits if you're ready. And with no objection we will be entering and admitting Deena Holder exhibit number 3 and Deena Holder exhibit number 4, which are the type written descriptions of the 1872 deed.

(Defendant Deena Holder exhibits 3 and 4 were marked for identification and admitted into evidence)

A. Okay.

Q. Mr. Joliet, could you read for the Court the portion that just details the wagon road, please?

THE COURT: That would be the smaller one.

Q. The smaller one.

A. I'll read it on the bigger one if that's okay because I can read it better.

Q. That - - As long - - That's fine.

THE COURT: I think the size of the font matters.

A. As long as we're in agreement. "Do hereby grant to David Kretzer his heirs and assigns forever, the use of a wagon road to and from said land hereby conveyed commencing at a stone planted on the West margins of the said Washington County Rail Road at what Cost calls his Rail Road crossing and running thence along the Western boundaries of said road," that would mean railroad, "South 30 ¾ degrees East 14 perches to a stone, South 36 degrees 10 6/10 perches to the lands of Jacob Keedy," that would be our parcel 1, "thence along the division line between Aaron Cost and Jacob Keedy until __ intersect the road leading from Jacob Keedy's house to the County road leading from Keedysville to Martin Eakles' Mill…"

Q. Do you know where Eakles Mill Road is or is there a road called Eakles Mill?

A. I believe that this was talking about what's now known as Dogstreet Road.

Q. Okay, so is it your understanding that Dogstreet Road was formally Eakles Mill Road?

A. I think.
Q. Okay.
A. I can't guarantee it but I think that's what they're saying.
Q. So, in reviewing that description then clearly the wagon road goes somewhere.
A. Yeah, to Mr. Young's parcel 1.
Q. And then whatever became of Dogstreet Road?
A. It says it goes to basically it goes to Keedy's land, which is now Young's land and then stops. And it goes to the road from Keedy's house to the county road.
Q. So, the wagon road stops at Keedy's - -
A. Right.
Q. Mr. Young's land?
A. Right.
Q. And then from that point goes out to another road?
A. No.
Q. It says you go to Keedy's road. Keedy's road which goes to the County road.
THE COURT: Let me have one of the exhibits. Let me have the smaller one so I can read along. You keep the big one.
A. Okay.
THE COURT: I'm not looking at exhibit 4, which is

the smaller one. Okay.

A. It doesn't say - -

Q. It doesn't say the wagon road.

A. - - at the county road. It doesn't say it's a wagon road. It says it goes to Keedy's road that goes to the county road.

Q. Is it fair to say that because the county road was mentioned that the, u call it a license and I'll get to that a moment, but the right-of-way purportedly granted by this deed was the intent to go to a county road?

A. Maybe but you can't get grants, you can't grant an easement or right-of-way over Keedy's land.

Q. Do you have any knowledge that a wagon road didn't exist over Keedy's land at any point?

A. Whether you call it a wagon road or a lane it doesn't matter because back then that's the only way they could get to their house was with a wagon.

Q. You previously testified that this language constituted a license versus an easement.

A. It's in the nature of a license but you can't grant either a license or an easement over somebody else's land. And by your drawing it stops right where the description has it stopped.

Q. But by Mr. Nagle's drawing you don't know if

there was another lane that went for Keedy's land to Eakles Mill Road, correct?

A. Sure, it was Keedy's lane.

Q. Is that referenced in a deed anywhere?

A. It's referenced in Young's chain; they call it a lane. It's a panhandle.

Q. So, what in your experience lends you to believe that this language constituted a license versus and easement?

A. It says you have use of. It was forty-two years later they stuck in the words right-of-way over. Regardless, even if it was an easement it stops at Keedy's land.

Q. You say use of. Is that the only terminology about this grant that is suggestive of the fact that you believe it's a license and therefore terminated?

A. Well, it wouldn't be terminated as a license except for latches because they let parcel 3 and the rest of parcel 1. Well, they never had a license over parcel 1. But parcel 3 be used for other purposes. And they let Stonecrest be developed without stopping them, without raising an objection saying hey I've got a license over the backend of that or I've got a right-of-way over the backend of that. But in any event it stops at Young's parcel 1. And they can't grant an easement or

a license over the Young Keedy property. They just can't do it.

Q. In terms of being a license though what, are there any other words in that description that make you believe that it's a license versus an easement?

A. It just says I grant you the use of it. It don't say I grant you the right-of-way over it. Forty-two years later somebody in the Holder chain asserted, inserted the words right-of-way over and use of.

Q. Isn't it true though that in Maryland a license ceases upon the death of the grantor?

A. By definition I think you could say that. And then what you're going to say is they grant it to you and your heirs and successors and assigns forever. But, if that's a license you can lose it by latches. And even if it's a right-of-way it only goes to our parcel 1. It does not go to the public road.

Q. If people were using that road and Mr. Keedy's property to get to the County road for more than twenty years wouldn't that be a prescriptive easement?

A. That's speculation because I don't have any evidence that ever happened. And if they did it with permission, with Keedy's permission you can't acquire, acquire through permission. You're talking about a prescriptive right-of-way.

Q. But you're also speculating that adverse possession in Young's chain of title gave Mr. Young part of parcel 3.

A. No.

THE COURT: No. He's not saying that at all. He has said that five times that he has no evidence of adverse possession before 1988.

Q. Okay. Let me ask you this. How would an easement be adversely possessed?

A. Are you talking about a prescriptive easement?

Q. Or any easement whatsoever. You previously testified yesterday that the easement or right-of-way or wagon road or whatever we're calling it, we'll let the Court make the determination as to what it is.

A. Okay.

Q. You testified yesterday that in any event it would have been lost by adverse possession by Mr. Young.

A. As to parcel 3, I can't - -

Q. Correct.

A. I can't say whether it was lost by adverse possession of anybody else but on that parcel 3.

Q. What would Mr. Young have had to do under Maryland law to adversely possess and extinguish the easement on parcel 3?

A. Use it in a manner that is contrary to how it

could be used as wagon road.

Q. So, is it your testimony then, you just said use it in a way that's contrary to be used as a wagon road? Is it your testimony then that Mr. Young would have had to use parcel 3 in some kind of manner inconsistent with a license or an easement?

A. Yeah.

Q. Okay.

A. And he testified that he did. He used it to I think he said tree stands and hunt mushrooms and he let it grow up into a wild state. And it would be impassable for a wagon road. With mature trees there's just no way and if you're going to assert that you have a right-of-way over it you'd say, hey, off with the trees. I've got a right-a-way with that.

Q. Hypothetically, if I have an easement to Potomac Edison, um, to put power lines or whatever through my land and the powerlines are through my land but I allowed trees to grow up, I forest for mushrooms, am I precluding Potomac easement, Potomac Edison - -

A. That's up to Potomac Edison. They have the right to cut down the trees.

Q. But I haven't - - That's not what I'm asking.

A. Okay.

Q. If I act in a way where I know Potomac Edison has

an easement across my property and I know that no matter what I do, if I put up a fence they might require me to take it down someday or if I let trees grow too high they might make me take it down some day. Just because I acted in a way that I want to, I plant some bushes there, I forest for mushrooms, I walked on my property, knowing that there's an easement there are my actions then tantamount to extinguishing or inconsistent with their easement.

A. Well two things that you're saying. You know there's an easement, okay. If I know Potomac Edison has an easement and I plant trees under that easement I'm subject to having those trees cut down to maintain their power lines. But that kind of easement is a whole lot different than a wagon road because it has to be, you have to be able to get over it, let's say with a six foot wide wagon. And I saw that land. There's no way you could even get a wagon over it. It had mature trees on it.

Q. But doesn't adverse possession that acquires somebody to affirmatively do something with the land?

A. Not necessarily. It has to be compatible with that type of land. This was fenced in on one side, basically from the best part of that, it abutted his Young's land on his parcel 1 on two sides and I think I

heard him say that he fenced, wire fence on the other end of it. So, if I had a right-of-way to a wagon road to use that of course it would go nowhere. But if I wanted to use that wagon road I'd have to tell him, look either you cut the trees off or I'll cut the trees off. And if I don't do that within a period for adverse possession then I just lost my right-of-way over it.

Q. Wouldn't, under the definition of adverse possession, and adversely possessing land or adversely possessing an easement means that you affirmatively do something to block that use?

A. Well, to a degree. For adverse possession the stronger one thing is the less you have to have the other. Here you have paying taxes on it. He's in the tax records. He's on the tax map. He's got a recorded plat; he's got a deed. That's real strong color of title. And then he's posted for no trespassing. If you had the right-of-way over to run you wagon then you are on notice and you're on notice when they grow up and it becomes impassable and he said he let it go back to nature.

Q. Did you listen to Mr. Young's testimony yesterday?

A. Um hum.

Q. Um, and is it your understanding that based upon

his testimony Mr. Young didn't block off or chain what we believe is the wagon road until 2020?

A. That's not what I understood, no. I understood that he put a wire across the northern most end of it and let the bulk of it grow up into woodlands.

Q. Would your opinion change if the fence was torn down?

A. No, because he's already acquired it. His, his (unintelligible) 58, 98, 2008 was already ripe then. So, if it was torn down now what difference does it make. He's got a deed to it. He's got a plat to it. So, if that fence is torn down now it doesn't make any difference.

Q. So, hypothetically if I am paying taxes, say I share property with a neighbor and we share a driveway, and the driveway is on my property but it also benefits my neighbor and there's an express easement to the same.

A. Okay.

Q. And I'm paying taxes on the entirety of my property where the driveway traverses and my neighbor can use it to get his property. Are you saying that my payment of taxes on my entire property extinguishes the easement that my neighbor has to get to his property?

A. No. Not even close to saying that.

Q. But didn't you - -

A. We're talking about adverse possession. We're not talking about a right-of-way.

Q. I know but didn't you just say that Mr. Young adversely possessed parcel 3 by paying taxes on the entirety of the property?

A. No, I said that was part of it. It was part of getting color of title. You don't adversely possess by any one element.

Q. Okay. And the four elements are open, notorious, hostile, exclusive?

A. Yeah. Some of the elements kind of merge into each other. And having strong color of title makes it less necessary to have the real strong other elements.

Q. But you're assuming that Mr. Young has color of title based upon - -

A. I'm not assuming. He's got a deed to it. He's got a deed to it. He's paying taxes on it. He's got a plat to it. A recorded plat.

Q. What is the basis for your opinion that the easement wagon road, whatever the Court determines it to be, was lost by latches?

A. They let Mr. Young use it for 30, 34 years without raising an objection to the way he was using it; it was contrary to being a road. They also, not that it matters in this case, but they also let Stonecrest be

developed without raising issues, hey we got a wagon road over the back of this.

Q. Who is they?

A. Holder's predecessors. And if you don't find that decades of non-use and non-existence or it wasn't enough you got Holder's predecessors declaring that their right-of-way is over Antietam Drive and simultaneously within a month, or a little over a month, for the first time in a hundred years not mentioning the wagon road.

Q. You are aware though that just because you have two access points to the property one by adding an additional access point doesn't extinguish the other, correct?

A. No, but we're talking about abandonment and their intent to abandon and that's pretty obvious by long disuse by the road not existing and then the icing on the cake is filing the declaration on Antietam Drive together with filing a deed that for the first time in a hundred years doesn't mention wagon road.

Q. Do you recall your deposition being taken?

A. Yes.

Q. Do you recall - - Actually it was two parts of a deposition. Mr. Holder examined you on one day and then I examined you on another day?

A. Yeah, I remember it was by zoom.

Q. Do you recall that I asked for the basis of all your opinions as to what you were going to testify at trial?

A. No. I don't recall that.

Q. Court's indulgence, Your Honor.

THE COURT: Sure.

Q. Do you have any historical knowledge of any of, how any of the predecessors entitle to Ms. Holder, access to any county roads from that parcel, the Holder parcel of land?

A. No.

Q. So, sitting here today you don't know whether or not they may have traverse the wagon road or walked the wagon road or took any kind of vehicles down there.

A. The wagon road ends at Keedy's property so what they use the wagon road for I don't know. It looks like their intent was to get to Dogstreet Road but it stops by its own terms it stops at the Keedy property.

Q. Yesterday Mr. Young testified that the Keedy - - when he acquired what we now know to believe is Keedy property that it was abandoned, it was in rough shape. Do you know how long it was abandoned?

A. Don't have a clue.

Q. Do you know how long nobody lived there?

A. Don't have a clue.

Q. Do you have any idea as to during the period of abandonment whether anybody used the Keedy property to diverse to a county road?

A. No, I don't.

Q. Is it fair to say then that people could have been using the property prior to Mr. Young acquiring it?

MR. PEMBROKE: Objection.

THE COURT: Sustained.

Q. Bear with me. When you plat properties, what do you use to plat them?

A. Pencil, ruler and they don't call it a compass, thing that's rounded inside.

THE COURT: Protractor.

A. Thank you.

Q. Thank you. Do you uses any computer software?

A. No.

Q. In terms of your opinions regarding any of these, the cases and the parcels at issue in these cases, did you independently plat and perform your own platting of parcel 3 in the Holder property and the Stonecrest properties?

A. I used what I saw on the plats. Yeah, I used the Reeder, the 1960 deed from Reeder to Wickline and I compared that against their plat and then against Fred Frederick's plat to see where parcel 3 was.

THE COURT: Fred Frederick's plat being plat 2499.

A. Got it.

Q. In your platting of the properties that you just mentioned did you - - and I believe you've already testified to the one, but did you notice any inconsistencies between any of them?

A. No. Well, 10 whatever 506 or whatever that was done to change Lot 1, uh, actually it was the same as Castle's except they made a mistake when they said the property was on the other side.

Q. Did you ever have any conversations with Gary Castle about - -

A. No.

Q. Mr. Joliet, I don't think I have any further questions for you.

**END OF CROSS EXAMINATION BY MS. PEEPLES**

THE COURT: Mr. Kline, do you have any questions?

MR. KLINE: Yes, thank you.

THE COURT: Let's go.

**CROSS EXAMINATION**

BY MR. KLINE:

Q. Mr. Joliet, when were you retained?

A. I guess in 2020. I got a call from Dave. I'd gotten calls from Mr. Young and I'd gotten a call from Mrs. Morral. I don't do litigation. I don't want any

part of it.

Q. Good for you. (Laughter)

A. I think I was the one that referred Young to Mr. Pembroke.

Q. So, I'm going to guess. Probably after the bobcat incident is what you're guessing.

A. Oh, yea, definitely after that.

Q. Because I think your testimony was you wouldn't have been involved but for that. Would that be fair to say?

A. Right.

Q. Okay. And so, when you were retained in 2020, obviously you, what was the purpose of your retention? To provide advice or to review plats or what was the scope?

A. To review the title and see if there was an easement over it and whether I thought he had it by adverse possession.

Q. So, this case was filed in 2020. After the case was filed did you then get the pleadings from Mr. Pembroke? You're Mr. Pembroke's expert, correct?

A. Right. Or Mr. Young's expert, I don't know.

Q. Yes, or Mr. Young's expert. The plaintiff's expert.

THE COURT: The Plaintiff's expert.

Q. With respect to being Plaintiff's expert did they forward you the depositions of everyone that was taken so that you could review them?

A. No.

Q. You indicated earlier that no one knows what would happen or what the language meant when Mr. Holder was going over some deeds in the mid 19 century, correct?

A. The 1872 deed?

Q. Exactly. Because we all were not there was the purpose.

A. Um hum.

Q. And I think you testified that you've been an attorney since '78?

A. That's correct.

Q. You made it since '78. So, now we have obviously the Annotated Code and we have a bunch of volumes but back in the day are you aware of the Maryland Code Public General laws that Maryland had in the 19th century?

A. No.

Q. Let me show you this and I'll indicate to the Court that it just deals with conveyancing in real property. If you look at that, does that look to you like something that would have been produced in the 19th century by the Maryland Judiciary with respect to whatever the Rules were or laws were in Maryland?

(Defendant Uncle Eddie's exhibit 2 was marked for identification)

MR. PEMBROKE: Objection.

A. I have no idea. That would be in the 1800's.

Q. 1870 - - I think it says - -

THE COURT: Overruled. He says he has no idea.

MR. KLINE: I'm still going to move to admit, Your Honor, Uncle Eddie's exhibit 2.

MR. PEMBROKE: I'm going to object, Your Honor.

THE COURT: What's the objection?

MR. PEMBROKE: Well, first of all he hasn't - -

CLERK: What is it?

THE COURT: Hang on a second. Let's slow down. Slow down. Let me see it.

MR. PEMBROKE: He has not identified it in any way shape or form and there's been no foundation otherwise laid for its admission. Not to mention the fact that I'm a little unclear at this point as to what the relevance would be.

THE COURT: It's titled the Maryland Code Public General Laws codified by John Prentiss Poe adopted by the General Assembly of Maryland on March 14, 1888, Volume I. This is not all of Volume I, I would imagine.

MR. KLINE: That's correct, Your Honor. It consists

of my count was thirty-four pages, Your Honor.

THE COURT: Okay, it's thirty-four pages, it carries the Maryland seal and indicates that it is by the authority of the State of Maryland printed by King Brothers of Baltimore and it was entered according to an act of Congress in 1888 to the Office of the Librarian of Congress in Washington DC.

MR. KLINE: If I may make a proffer to the Court?

THE COURT: Please.

MR. KLINE: Your Honor, I'm interested in page 254, subparagraph 12 defining the word grant and it references *Worthington versus Lee*, 61 Md. 539.

MR. PEMBROKE: Your Honor, if I might?

THE COURT: Let me read the definition first.

MR. PEMBROKE: Yes, sir. What page was the Mr. Kline?

MR. KLINE: 254 in the top left hand column. Top left hand portion of the page.

THE COURT: Number 12 on page 254.

MR. KLINE: Yes. And, again, by way of proffer I copied the whole conveyancing portion not just the one page I was interested in.

THE COURT: I understand. Mr. Pembroke, do you wish to be heard?

MR. PEMBROKE: Yes, Your Honor. I also note on the

first page that the exhibit is dated 1888. We don't know if these laws were or were not in effect in 1872 when the deed was prepared.

THE COURT: Is this going towards what the word grant meant in the 1872 deed?

MR. KLINE: 1888, Yes. As of - - I can't tell you 1872 but – -

THE COURT: But as of 1888 here's what the word grant meant?

MR. KLINE: Yes, Your Honor. And the reason for that, Your Honor - -

THE COURT: Meaning - - Let's read the words as it is. The word grant in a deed or any other words purporting to transfer the whole estate of the grantor shall be construed to pass to the grantee the whole estate. It's not quite the same as grant of use.

MR. KLINE: However, if the Court would read further - -

THE COURT: Unless there are limitations or reservations showing (unintelligible) a different intent.

MR. KLINE: So, it would be in the negative if it was not granting a license or a right-of-way.

THE COURT: Okay. I hear you.

MR. KLINE: Yes, sir.

THE COURT: Is this being asked to be admitted for

anything other than page 254 number 12?

MR. KLINE: No, Your Honor.

THE COURT: Okay. The objection is overruled. I'll give it the weight that I think that it is due. This is how the General Assembly appeared to define the word grant in 1888. I recognize that that's not the same as 1872 and I think I have the ability also to define what the word grant means. But I will take it into consideration. Defendant's 2, Defendant Uncle Eddie 2 is admitted.

(Defendant Uncle Eddie's exhibit 2 was marked for identification and admitted into evidence)

Q. During your testimony Mr. Joliet, you referenced numerous times different Plaintiff plats. And during that point in time when you were referencing them you indicated to the writing in the margins. Would that be fair? Notes off to the side.

THE COURT: I think he means the notes and the acknowledgements.

A. Oh, yeah, yeah, yeah.

Q. And so, for example - -

THE COURT: Might be behind there. Okay, go ahead. I'm sorry.

Q. It could be behind it. So, if something was written and, for example, this has a note, a right-of-way exists over the existing the existing farm lane. I'm looking at Plaintiff's exhibit 3 and there's a note in a box.

A. Um hum.

Q. Um, and there's a note at the top left hand portion but there's also notes on the exterior or perimeter of the boundary lines. Would that be fair?

A. Would what be fair, I'm sorry?

Q. So, there's notes. It says fence line does not follow deed line.

A. Right.

Q. Here on Plaintiff's 3 on the panhandle portion there's an note there.

A. Right.

Q. Okay. And my point is when, and you correct me because you've been doing this much longer than I have, when attorneys do titles or deeds and they do their search they go to the last deed filed and generally speaking super copy or copy word for word that description in the new deed, correct?

A. No. Not when you have a new surveyor description. And we had a new surveyor description.

Q. That's not my question.

A. Okay.

Q. Let me ask you again. I don't do title work. I don't do real property.

A. Okay.

Q. I want to do a favor for a friend.

A. Okay.

Q. And they want to quick claim deed something, I'm going to go back to the last deed to copy that description and input it in a new deed. Isn't that the way most transfers occur?

A. Generally, yeah.

Q. That was my question.

A. Okay.

Q. So, if the prior deed - - You can sit down if you'd like or you can stand, doesn't matter to me.

A. No, that's alright.

Q. If the prior description is incorrect in a lot of cases that, that mistake continues forward.

A. Yeah.

Q. The fact that it's written on a plat does not make it true, does it? I mean it's certainly evidence of something.

A. Sure, is strong - -

Q. But it doesn't make it true.

A. Sure, is a strong indication when he refers to

plat 2499. And he holds the exact same line as plat 2499.

Q. But your testimony before was is that there was a discrepancy between the Reeder plat and the Wickline plat on description of lengths of boundary lines.

A. Yeah, mine are descriptions chains.

Q. Okay. So at least between those two plats although I'll give them the - - Everyone tried their best to get it right.

A. Okay.

Q. There was still a discrepancy.

A. But when Mr. Frederick went out and surveyed the boundary line that's what he found.

Q. Understood, but on - -

A. And it's basically the same property, same description.

Q. Okay. But it's not, okay. I understand it's basically the same property but the point here is we're arguing over approximately 12 feet of space going 465 feet - -

A. I think it's 416, isn't it? Maybe I'm wrong.

Q. It says 462.16 on Plaintiff's 3.

A. Oh, that's where I get this. Okay.

Q. 12 feet, approximately 12 feet wide, you were here yesterday.

A. Um hum.

Q. It's approximately 12 feet wide by 462.16 feet off of Plaintiff's exhibit 3.

A. Right.

Q. This is - - It's a miniscule amount compared to the 10.36.

A. Sure, sure, yeah.

Q. So, while it may be the same property this matters because that's why we're here today. Parcel 3 on Plaintiff's 3. You understand that? You understand why everyone's on this side of the table?

A. Well, okay.

Q. Okay. So, to say that it's generally the same property real estate is specific, that's why we have specific - -

A. No, no, not when you have track the line like this. It's not unusual to have the prior deed to have a few errors a foot or two here or there, which is what Mr. Frederick found.

Q. But a foot or two here or there could impact parcel 3. So - -

A. Not really because he found the fence, the same fence that was on the other parcel that was described as parcel 3. Mr. Frederick found that fence.

Q. Remnants of the fence because you testified when

you went out - -

A. Remnants of the fence whatever. He found - -

Q. Not - -

A. Mind you, that was 34 years ago. He could have found the fence.

Q. May have found the fence. You don't know.

A. Yes, I do know because he's got it showing on his plat.

Q. But be - - But because it's on the plat you're saying the plat is God.

A. Yeah.

Q. Okay. So, if the plat says abandoned B&O Railroad that means that B&O Railroad, because it's on the plat it's abandoned, that means it's abandoned because it's on the plat?

A. You're mixing apples and oranges.

Q. No.

A. You are.

MR. PEMBROKE: Objection.

THE COURT: Hang on. Ask your next question. Don't argue with the witness.

Q. If it says abandoned B&O Railroad on the plat does that mean that it's, that that, we've had a determination that it's abandoned?

A. It depends on what the plat was prepared for.

Q. The plat was - -

A. That's why they say now or formally, NF, now or formally.

Q. Yeah, but, if the language is on there that the railroad is abandoned why would it be on the map, according to you, it's on the map because it's on the plat, excuse me, not the map, the plat.

A. Okay.

Q. Because it's legally correct. Is that you're testimony as the expert for the Plaintiff?

A. Well, the call is to the railroad land and then that follows railroad, railroad land, which is now the park service or your old land.

Q. I must be having a really hard time communicating today.

A. Okay.

Q. I'll try again.

THE COURT: How about this. Which plat are you talking about that says it has abandoned Baltimore Ohio Railroad? Before we - -

MR. KLINE: I understand.

THE COURT: We're talking hypotheticals all day but if we have a plat that says it I want the witness to see that plat.

MR. HOLDER: It's the other one Bob. No, on the

board.

THE COURT: My eyes on 2499 say Baltimore Ohio Railroad. It doesn't say the word abandoned but maybe it says it somewhere else that I'm not seeing.

Q. On Plaintiff's 12, in the top right hand corner.

THE COURT: 8292?

Q. 8292 in the top right hand corner insert square says vicinity map and it shows the Stonecrest sight with some shading and going diagonally from approximately 12:00 o'clock to 3:00 o'clock it says abandoned railroad.

A. Right.

Q. That means it's abandoned? So - -

A. It looks like it was abandoned at that time and I think it was.

Q. So, as we sit here today, even though this is 2004, our Plaintiff's 12, 8292.

A. Okay.

Q. Shows abandoned railroad. On Plaintiff's 3, dated in 1988, it just has B&O Railroad, no railroad tracks just shows it in the general vicinity.

A. Right.

Q. So, between - -

A. Well, no, it shows, it doesn't have to show tracks. It shows railroad property.

Q. Alright, but between '88 and '04, it became

abandoned?

A. Probably.

Q. But if '88 - - If Plaintiff's 3 is to be taken as correct - -

A. Right.

Q. Because it has writing on it. And Plaintiff's 12 has writing on it. Why isn't that being correct? And I'm referring to the abandoned railroad portion in the upper right hand corner on Plaintiff's 12.

A. I don't have any reason to believe it wasn't correct.

Q. Okay.

THE COURT: Acknowledging of course, that 8293 also says that that land is owned by the Department of Natural Resources, so, of course it's an abandoned railroad because it's now owned by the Department of Natural Resources as of plat 8292 8293, right? I just want to make sure I'm understanding your line of questioning. I'm confused.

Q. My line, my line of questioning is if mistakes are made in prior deeds and they're not corrected as the deeds as the property is transferred going forward that mistake continues until someone discovers the mistake, is that correct?

A. Until they had it surveyed, yeah.

Q. So, it's possible that while that says abandoned, and it's possible the judge may be correct, it's also possible that someone according to you that because right now the railroad is abandoned because on that plat, Plaintiff's 12, and while it may be owned by the conservation community as the judge suggested, whoever backs up to that land could adversely possess it for twenty years or could deed it because your hypothetical was, if I understood you correctly Mr. Joliet, hypothetical wise you can do whatever because once you file it, once you file the deed on record at land records and you start paying tax on that, that, it starts your process of adversely, adversely possessing that piece of property. I'm not saying the railroad itself but maybe right up to it.

A. No, you can't adversely possess railroad ground. It says can't be done.

Q. But it's abandoned.

A. It doesn't matter. You still can't do it.

THE COURT: But no. You're still confusing it. It's owned by the Department of Natural Resources. According to 8293 - - Right?

MR. KLINE: I - - I don't mean to argue.

THE COURT: No, I'm confused as to why you're asking the question.

MR. KLINE: My understanding of his testimony from Ms. Peeples cross - -

THE COURT: Yes.

MR. KLINE: Her examp - - Her hypothetical was if I own "a" and I own "b" where there's a "b" and they overlap that at some point because "b" overlaps on "a" and (unintelligible) the deed his testimony was that deed put "a" on notice and if "b" is paying taxes, generally, just a mistake. I'm not saying anyone did anything fraudulent, just whatever error, that that would then give "b" an adverse and we have two large tracts of 500 acres each between "a" and "b". You're not going to go out and do anything with 500 - - Maybe your cows are roaming, maybe your cows are not roaming, or steer or bison or whatever the heck it is. Whatever. Llama. My point is if "b" takes some of that Wyoming property and it's over on "a", "a" and "b" are not doing anything particular that showing that they're owning it because their cattle are just roaming. But yet "b" could come in 20 years later because it was a general mistake on the way that the deed was written and decided to put up a fence but because his cows were roaming on the land according to Mr. Joliet "b" would then adversely possess that overlap, that then diagram.

THE COURT: Okay. I agree that his testimony to Ms.

Peeples was the deed, along with the payment of taxes, along with plat 2499, that those are the things that he granted color of title to Mr. Young even if they were wrong.

MR. KLINE: Understood.

THE COURT: Okay.

MR. KLINE: And my point was - -

THE COURT: And that started his time period.

MR. KLINE: And my point is and I don't mean to get argumentative. I apologize to Mr. Pembroke.

THE COURT: No, no, it's okay. No.

MR. KLINE: My argument is garbage in garbage out.

THE COURT: Okay.

MR. KLINE: Because it's not cleared up and we already show a discrepancy between the two plats.

THE COURT: Understood.

MR. KLINE: And I - -

THE COURT: I don't understand - - I get you. I don't understand the line of questioning as it relates to the abandoned railroad DNR property because you can't adversely possess against DNR.

MR. KLINE: My point is - -

THE COURT: Cannot adversely possess against the State.

MR. KLINE: The fact that it's - - The fact that it's

on the plat - -

THE COURT: Yes.

MR. KLINE: - - is for one purpose but it doesn't make it true because we already know that the distances are off between the two plats.

THE COURT: And my suggestion is - - My only point on this is your attempt to show that the abandoned railroad therefore must be blessed?

MR. KLINE: I'm not asking for it to be blessed.

THE COURT: Okay.

MR. KLINE: I'm saying that what's on the plat should not be taken - -

THE COURT: As gospel.

MR. KLINE: Literally because the fact that it says existing wire fence his, Mr. Joliet's testimony was, there were remnants when he came out.

THE COURT: And his testimony is that when Mr. Frederick went out, whatever year Mr. Frederick went out, that fence may have actually been there because he trust Mr. Frederick to draw the fence as he found the fence.

MR. KLINE: May or may not be. But yesterday Mr. Young testified that the fence was in disrepair and he had to repair it although we didn't get into specifics of how much was up or how much was down.

THE COURT: Okay. I understand your points. Do you

have any other questions? Do you have any other questions?

MR. KLINE: Yes, briefly.

THE COURT: Go ahead.

MR. KLINE: Sorry.

Q. Is there a difference between monuments and iron pins when doing survey work?

A. Well, I think an iron pin can be considered a monument. Usually a monument you think of a stone or a tree or whatever else.

Q. Is it important that if in a prior deed it references a monument that the monument be found?

A. No.

Q. So, if the prior - - So, you don't go out. You said you do some survey work but you don't physically go out with the tripod with the metal thing and have the guy with a stick, right?

A. Right.

Q. Okay. So, if the deed before had a monument reference in it you're not looking for the monument and you're actually not even looking for the iron pin, you're looking at what's written down to determine where the boundary lines are.

A. I'm looking at Mr. Frederick's survey and his description and on plat 2499 he explains that in his

surveyor's certification what he did.

Q. Is it normal to do a survey without doing title work or is it best practices to do title work before you do a survey, I'll ask it that way?

A. Well, I don't know, I'm not a surveyor. But usually, a surveyor is going to have at least the current deed in hand in order to do it. Now, I think usually like Fred Frederick usually does the title work, goes so far back and then he looks at the adjoining owners. But he's got a certification on plat 2499 that clearly defines what he did.

Q. If a, if a person that did the plat did not review title work before drafting the plat would that give you pause in reviewing the plat?

A. No. Here he says he found on the ground what was in the Reeder to Shank deed, the three parcels. And he says why he came up with a little bit different conclusion but he used his best practices and that's what he found. So, he didn't have to do a title search. In fact, if he did a title search I don't think he'd find a deed in the chain to parcel or parcel 3 and that's what he said. He didn't say he didn't find as to parcel 3 but he said to parcel 2.

MR. KLINE: I'm going to object because it's unresponsive to the question and the narrative is going

on.

A. Okay.

THE COURT: Overruled.

Q. If I'm purchasing a house - -

A. Okay.

Q. - - how would I know if there and how would I know without doing title work if there's an easement through my backyard?

A. Well, yeah, you'd have to a title search to discover that, yeah.

Q. So, that would be the only way?

A. Basically, yeah, unless you got a survey, if you got a house location survey or other survey that shows it.

Q. So, if, hypothetically, if the law is in Maryland that I can transfer title with an easement without specifically indicating the easement and I purchased the property a hundred years later and there would be no way then to determine if there's an easement without finding the dead person that's now a hundred years plus old?

A. Well, in Uncle Eddie's chain a hundred years passed where they didn't say a general together with all easements of record. It didn't have anything. They just did a flat out conveyance.

Q. Just a grant. Just to grant us some land.

A. They had a series of flat out grants it was - -

Q. And the quick claim deed I think you indicated - - I'm wrapping up, Your Honor. The quick claim deed you indicated is unconveying the grantor's conveying to the grantee whatever interest they have in whatever is described below?

A. Yeah. Whatever interest they may have.

Q. They may have. So, if, if Jennifer Butts did have some interest in some land granted to Uncle Eddie's whatever that would be, even if it's a pothole covering in the middle of parcel 3?

A. Well, Jennifer Butts - -

Q. I'm sorry. Uncle Eddie's deed, quick claim deed to Uncle Eddie's, grants Uncle Eddie's - - Have you seen Uncle Eddie's deed?

A. Yeah, but I don't remember it being a quick claim deed.

Q. If it's a - - I'm going back - -

A. Deena Holder in 2019 - -

Q. Okay.

A. - - just deeded the property to Uncle Eddie.

Q. Okay, but my question is on a quick claim deed you get whatever interest that may or may not exist?

A. Right. For instance, on our parcel 2 I think she had already lost parcel 2 by the adverse possession but

she just confirmed it by giving a quick claim deed to parcel 2. That would be a good example for quick claim deeds.

Q. She confirmed losing property but yet she's going to transfer the property - -

A. Right.

Q. - - that she lost by confirming that?

A. Right, because she's saying, okay, look, there is, their title it looks as if I still have this because there's an overlap. I see that. And any right or title I have in that even if it's just, you know, at face value, I give it a transfer. And that cures the question that they had it was raised by Mr. Frederick's plat.

MR. KLINE: One moment, Your Honor. Nothing further, Your Honor. Thank you.

**END OF CROSS EXAMINATION BY MR. KLINE**

THE COURT: Mr. Pembroke, any follow-up?

MR. PEMBROKE: There will be, Your Honor.

MR. KLINE: I'm sorry, what did you say, Mr. Pembroke?

THE COURT: How long will it be? Could be awhile?

MR. PEMBROKE: Always endeavor to be brief, Your Honor, but you know how that is.

THE COURT: I'm thinking maybe we should break for lunch. I have a question for the witness is that okay

before we break for lunch?

MR. PEMBROKE: Certainly, Your Honor.

THE COURT: I just want to be sure I'm clear on something. The 1872 deed - -

A. Right.

THE COURT: - - that grants the use of the wagon road, right.

A. Right.

THE COURT: Whose chain of title does that show up in?

A. If you went back to 1872 which was an out conveyance it would show up in the Cost Stonecrest title but most people wouldn't go back that far. And that's the only way if you were buying the Cost Stonecrest property that's the only way you'd find out there was a wagon road over it is to go back to the out conveyance in 1872.

THE COURT: Let me ask it a different way.

A. Okay.

THE COURT: I'm going to buy Mr. Young's property.

A. Okay.

THE COURT: You're going to do the title work for me.

A. Okay.

THE COURT: And I come to you and I say I want title work on the Young property.

A. Okay.

THE COURT: Your title work taking the chain of title back of Young are you going to find the 1872 deed for the wagon road?

A. No, even if I search the abutting property, the Stonecrest property, it's not going to show up.

THE COURT: Hang on, we'll get to that in a second.

A. Okay.

THE COURT: I asked you to chain of title for me so I can go get title insurance.

A. Okay.

THE COURT: And I can buy the property and I can know that there's no easements, right? I can have faith in your work.

A. Okay.

THE COURT: And I tell you to track back Young. You're telling me that if you track back Young for chain of title you're not going to end up at that 1872 deed?

A. No.

THE COURT: Okay. Let me make a note of that. If before Stonecrest started developing lots but they owned the property, they're putting in the roads, they're putting in the water lines, I'm a developer. I'm going to come in I'm going to build the houses. And so, I want to buy all of Stonecrest.

A. Okay.

THE COURT: And I come to you and I say Mr. Joliet I'm a fabulous home builder, I'm going to buy all of Stonecrest. I want you to chain of title it back for me. And you do that work for me.

A. Yes.

THE COURT: Are you going to find the 1872 deed?

A. Not likely.

THE COURT: Why not?

A. Because even if I go back a hundred years I'm not going to find that out conveyance to Kretzer. Now, I might find the Antietam Drive because if there were plats or whatever. Apparently, they did find Antietam Drive. When you search (unintelligible) most title searches say, well, I'm not going to, I'll take exception to anything that you could see on the ground.

THE COURT: Let's say you go back further than a hundred years. You just keep going. Would you ultimately find the 1872 deed if you're doing chain of title for the Stonecrest property?

A. Yeah, if you go back to 18 - -

THE COURT: Keep going, you would find it.

A. Yeah. But if you bought in 1976 you'd have to go back a hundred years. If you bought it after 1976 you'd have to go back more than a hundred years.

THE COURT: Right. Okay.

A. And I do, when I do title I look at the out conveyances and see if there's anything like this. But I don't think I'd go back to 1876. One reason is - -

THE COURT: But I want to be sure I'm clear. Doing the Young chain of title, I'm buying Mr. Young's property, doing that chain of title you will not get to the 1872 deed, even if you keep going?

A. No, because they are two different chains.

THE COURT: Does anybody - - Before we leave that issue, does anybody have any questions based on the questions that I just asked Mr. Joliet before we break?

MR. PEMBROKE: None from the Plaintiff.

THE COURT: Very well. From the Defense?

MR. KLINE: One from the Defense, Your Honor.

THE COURT: Yes.

MR. KLINE: Go ahead.

MR. HOLDER: Just and the reason you wouldn't find the right-of-way in the Young chain is because the property that it burdens was adversely possessed by Young, correct?

A. Let me think this over again. The reason you wouldn't find it the adversely possessed land was - -

MR. HOLDER: Outside of his title chain, correct.

A. Outside of the title chain. It was probably, I'm

guessing, it was probably in the Butts chain.

MR. HOLDER: Correct.

THE COURT: Okay.

A. But if I found that out I would have to go all the way back to an out conveyance in 1872 because there is no reference to the wagon road in the Butts chain. There is a reference to a private road along this line, which I would take to be a lane, a farm lane, and I would have no reason to think that parcel 3 was subject to anything.

MR. HOLDER: Well, when you researched for Young, you found it as adversely possessed so wouldn't it have been dutiful to give, in this situation the Court, a title search you could stand behind to go ahead and search the title that he adversely possessed to find out if that was even burdened by an encumbrance no matter how deep you have to go if you know you're going to fight an (unintelligible) suit.

A. Would I search the - - Well, it's hard say where that strip came from. I'm guessing it came from the Butts chain. But would I go back in 1988, over a hundred years to find an out conveyance when nothing in the, nothing in the Stonecrest chain shows any reference to a wagon road, no.

MR. HOLDER: Okay.

MR. KLINE: Your Honor, one question for Uncle Eddie's if I may?

THE COURT: Sure.

MR. KLINE: Do you have a copy of your August 3, 1988, letter you sent from your office to Mr. Young?

A. Not here.

MR. KLINE: If I may approach, Your Honor?

THE COURT: Okay.

MR. KLINE: Do you know who JM is? Would that have been your secretary in 1988? Do those initials ring a bell?

A. Probably.

MR. KLINE: I'm going to show you what is dated August 3, 1988, which is on a computer screen - - We'll get a hard copy. Does that refresh your recollection of a letter you drafted and sent to Mr. Young in 1988?

A. Well, I'm sure it was, yeah. Yeah.

MR. KLINE: Okay.

A. And I had him sign that letter too.

MR. KLINE: Yes, you did. And Mr. Young has signed the bottom of the letter.

MR. PEMBROKE: I'm familiar with it.

MR. KLINE: Your Honor, I'm going to move to have Uncle Eddie's whatever number I'm up to but I'm going to submit the hard copy after we come back from break.

THE COURT: Any objection?

MR. PEMBROKE: Um, I'm not sure what the relevance of introducing the letter would be.

THE COURT: Well, I don't either because I have no idea what it says.

MR. KLINE: The letter indicates that there is a title problem and he's taking subject to a number of exceptions to a title report in 1988, and that Mr. Young would deal with it personally, which presumably would be this litigation.

THE COURT: Am I ultimately going to see the old title report?

MR. HOLDER: That's what was admitted as Western Maryland exhibit that's in evidence.

THE COURT: Okay. I just don't know if it's about this easement or if it's about something else but I understand.

MR. KLINE: It references - -

THE COURT: It's a letter that this witness wrote in 1988 - -

MR. KLINE: Regarding the Wickline property.

THE COURT: And might have re-wrote it.

MR. PEMBROKE: I believe - - If I might? I believe that the bulk of it talks about the overlap at the end of parcel 2 with respect to Butts.

THE COURT: It may. It may. But I think it's relevant nonetheless so it will be admitted. Uncle Eddie's what? What number?

MR. KLINE: Uncle Eddie's I believe 3.

THE COURT: Okay, and you're going to provide the clerk with a hard copy after lunch.

MR. KLINE: After lunch, yes sir.

THE COURT: Is that okay Mr. Clerk? (No audible response)

(Defendant Uncle Eddie's exhibit 3 was marked for identification and admitted into evidence)

THE COURT: Okay, we are at call it 12:15. We will break for lunch. We will come back at 1:30. Is that okay, counsel, 1:30?

MR. PEMBROKE: Yes, sir.

MR. HOLDER: Yes, Your Honor.

MR. KLINE: Yes, sir.

THE COURT: Okay. We will be recess until then.

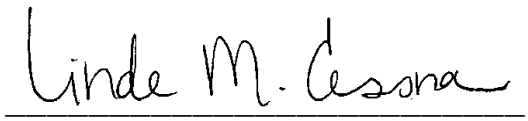
(Whereupon at 12:17 p.m. court was in recess and morning session of day 2 concluded.)

DIGITALLY SIGNED CERTIFICATE

I HEREBY CERTIFY that I reported verbatim by electronic device the proceedings in the matter of, *Jeffrey Young v. Justin Holder, et al.,* Case No. C-21-CV-20-371 in the Circuit Court for Washington County, on June 22, 2022, Volume II – Day 2. Morning Session, before the Honorable Andrew F. Wilkinson, Judge.

I further certify that the proceedings were transcribed by me to the best of my ability in a complete and accurate manner, and page numbers 1 through 151 constitute the official transcript of the proceedings.

In witness whereof, I have affixed my signature this 30th day of August, 2022.



Linde M. Cessna

Court Reporter

**IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND**

**JEFFREY YOUNG** *

**Plaintiff** *

**v.** * **CASE NO. C-21-CV-20-371**

**JUSTIN HOLDER, et al.** *

**Defendants** *

**TRANSCRIPT OF PROCEEDINGS**

**(MERITS HEARING)**

**(VOLUME II – DAY TWO – AFTERNOON SESSION)**

Circuit Court

Hagerstown, MD

June 22, 2022 at 1:31 p.m.

Before:

**The Honorable Andrew F. Wilkinson**

Appearances:

**R. David Pembroke, Esquire, attorney for Plaintiff, Jeffrey Young; and**

**Justin Holder, Defendant, pro se; and**

**Brandy Peeples, Esquire, attorney for Defendant, Deena Holder; and**

**Robert Kline, Esquire, attorney for Defendant, Uncle Eddies Broken Down Palace.**

Transcribed from electronic recording by:

Linde M. Cessna, Court Reporter

Circuit Court for Washington County, Maryland

The Court House

Hagerstown, Maryland 21740

240-313-2564

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**P R O C E E D I N G S**

**(Volume II – Day 2 – Afternoon Session)**

THE COURT: Okay, we're back on the record for Jeffrey Young versus Justin Holder, et. al., C-21-CV-20-371. As we broke for lunch I believe Uncle Eddies had an exhibit that was on the computer. I now have a copy of it. I believe it was number 3. Is that right, Mr. Clerk?

CLERK: Correct.

THE COURT: Do you have it yet?

CLERK: I don't.

THE COURT: Alright, I'm handing the Clerk a copy of the letter. It will be Uncle Eddies number 3.

(Defendant Uncle Eddie's exhibit 3 was admitted into evidence)

MR. KLINE: Yes, sir. Okay, thank you Judge.

THE COURT: Yes. Mr. Pembroke, then I think we are then to redirect examination if you wish.

MR. KLINE: Your Honor, I recognize a gentleman in the third row. I don't know if he's - - I don't know this gentleman. Although he looks very friendly.

THE COURT: What's your name, sir?

MR. LEVEY: Barry Levey.

THE COURT: Barry Levey. Are we expecting Barry

Levey as a possible witness?

MR. HOLDER: Yes, Your Honor.

THE COURT: Mr. Levey, there's been a rule on witnesses in the case, which means anybody who may be a witness cannot stay in the courtroom during testimony so I need you to step out into the hallway, okay?

MR. LEVEY: Absolutely.

THE COURT: Thank you, Mr. Levey. Okay, Mr. Pembroke.

MR. PEMBROKE: Thank you.

**TESTIMONY OF CHRISTOPHER JOLIET**

**Christopher Joliet**, having been previously duly sworn, did testify as follows:

**REDIRECT EXAMINATION**

BY MR. PEMBROKE:

Q. Good afternoon, Mr. Joliet.

A. Good afternoon.

Q. You testified on cross-examination with respect to the Wickline Young deed, correct?

A. Yes.

Q. Alright, and that's the 1988 deed?

A. Yes.

Q. I believe it's; I believe it's Plaintiff 1.

THE COURT: I believe it is.

Q. Okay. Now, in that deed Mr. Wickline and Ms.

Wickline warrant part of the conveyance in that deed to Mr. Young by adverse possession. Is that correct?

A. Well, they have a general warranty of the whole property and then as far as parcel 2 goes, that's the part that touches the public road, they said in addition we've adversely absolutely we've adverse possessed this for over twenty years.

Q. Okay. And then subsequent thereto Mr. Young has owned that parcel for an additional now thirty-four years.

A. Right.

Q. Okay. So, notwithstanding the Wickline's adverse possession of parcel 2, Mr. Young would have the statutory period of ownership in parcel 2 on his own right notwithstanding their ownership?

A. Yes.

Q. Okay. You were asked about - - You were asked about some fence lines on, I believe it was the Reeder Wickline plat from 1966?

A. Yes.

Q. Okay. And I believe you were asked whether or not, whether or not you knew if the fences were in the same location as the property line?

A. Yeah.

Q. Do you have any reason to think that they aren't

on the property line?

A. No, in Fred Frederick's survey he shows a fence exactly in that same location. On parcel 1 and 2 Fred Frederick shows that the fences follow the property line, so I would summarize, surmise from that, that they do follow the property line on parcel 3.

Q. Okay. Now, you were asked about whether or not you located any monuments on parcel 3. Do you recall that?

A. I was asked that, yeah.

Q. Okay. And I believe your answer was no, you didn't find any monuments.

A. Wasn't looking for them. Didn't find them.

Q. Okay, is it significant that you didn't look for or find them in the work that you were doing?

A. No.

Q. Why not?

A. Well, doing title, that's not - - You might generally plat out a property to see if it's generally right but there's no reason to go to the property and survey it. That's what surveyors are for.

Q. Based upon your examination of the titles and review of the various plats and other information available to you in this matter do you believe that Mr. Frederick corrected plat 2499 is accurate?

A. Yeah, he made some small adjustments to it. He came up with a little bit less land than the 1966 deed.

Q. And is that unusual?

A. No. As I say, if you look at his statement on the top left hand corner of the plat 2499, he explains how he came up with what he came up with.

Q. Okay. I believe you indicated that when you were talking about parcel 3, was parcel 3 cleared when you walked on the property?

A. No.

Q. Okay, could you give us a more specific physical description of parcel 3 when you walked it?

A. It had mature trees. I could still see the fence line or what was left of the wire fence. It was almost impossible to get over. And it was overgrown. You know, it was woods.

Q. Was there any visible signs on the ground of a pathway or a lane?

A. I think there was a little bit of a path. It could have been deer path or something. I tried to stay on that. I was having a hard time walking then. But, uh - -

Q. Okay. And this was at a time after Mr. Holder had entered the property and done some work?

A. It must have been, it had to be.

Q. With a bobcat?

A. Yeah.

Q. Okay. You were asked - - You were also asked by Ms. Peeples, she gave a hypothetical about whether two people granted an easement to two different people. Let me just change that around a little bit. If you gave an exclusive easement to one person and then gave a easement over the same property to a second person is the second easement valid?

A. Probably not because if you have an exclusive easement that would mean only the first people could use it.

Q. Alright, but if there wasn't exclusive then would the second easement be valid?

A. Yeah. You can do easements to the same piece of property, yeah.

Q. Would the Stonecrest plats have been accepted and approved without a title search?

A. I don't know. That's up to the County.

Q. Normal custom and practice would they be?

MS. PEEPLES: Objection.

A. I don't know. I mean that's up to the County and I don't know if they recall title search.

THE COURT: Overruled. He says he does not know.

Q. What is the - - What is the effect of an

inaccurate description of property in a deed?

A. In this case, nothing.

Q. Well, just, first of all, just generally.

A. Depends on what the inaccuracy was whether it was significant or not.

Q. Alright, let's just suppose that talking about the property here, okay, and based on the description in the deed, let's just say we actually have a width of parcel 3.

A. Um hum.

Q. Okay. And it's supposed to be twelve feet but based on the description it's twenty feet. Okay. What would the legal - - It's supposed to be twelve but the deed says twenty. What's the legal effect of that?

A. You'd go by the smaller one, the twelve foot one.

Q. Why?

A. Uh, again, it depends if they claimed, if they had adversely possessed twenty feet over the twelve feet, that would make a difference. But generally, I just go by the smaller one.

Q. Okay, so, if I understand your answer correctly if the error is not detected and you have the elements of adverse possession and you don't have the elements of adverse possession you go by the smaller number?

A. I would, yeah.

Q. Alright. And if you've had the statutory period of twenty years and the other components of adverse possession you would gain the additional footage by adverse possession?

A. Right.

Q. Now, in this case, we've had at least one example of a quick claim deed.

A. Um hum.

Q. Okay. Does the execution of a quick claim deed necessarily mean that the person who attempts to convey property actually has an interest to convey the property?

A. No. A quick claim deed is saying if I have interest I'm giving it to you.

MR. PEMBROKE: Your Honor, Uncle Eddies exhibit 3 has been admitted?

THE COURT: It has been admitted.

MR. PEMBROKE: I don't have - -

THE COURT: The clerk has it.

Q. Let me show you what's been marked as Defendant Uncle Eddies exhibit 3. Do you recognize that?

A. Yes.

Q. Okay, what is it?

A. That's a letter I had Mr. Young sign when we closed on it. What I was concerned with was the plat showed an overlap on the panhandle and I couldn't

guarantee him that he wouldn't have any problem.

Q. Where on the panhandle was the overlap?

A. On the left, let's say third, where it shows in the plat as overlap with - -

Q. Running to Dogstreet?

A. Yes.

Q. Okay. That is now parcel 2?

A. Yes.

Q. Okay. Does the letter refer to any concerns or discrepancies with respect to parcel 3?

MS. PEEPLES: Objection.

A. No.

THE COURT: Overruled.

A. No.

Q. Mr. Joliet, based upon the questions that were asked of you on cross-examination, have you altered your opinion that you gave on direct with respect to Mr. Young's ownership by adverse possession of parcel 3?

A. No.

Q. As a result of the questions asked you on cross-examination have you altered your opinion with respect to whether or not there is currently a right of access over parcel 3 for any of the defendants?

A. No.

Q. Okay, thank you. No further questions.

**END OF REDIRECT EXAMINATION**

THE COURT: Okay. He's excused?

MR. PEMBROKE: Uh, no, Your Honor.

THE COURT: Okay. You're not excused but you may step down.

**END OF TESTIMONY OF CHRISTOPHER JOLIET**

THE COURT: Your next witness Mr. Pembroke.

MR. PEMBROKE: Call Jesse Downs.

THE COURT: Mr. Kauffman, may I have Jesse Downs from the hallway please?

**TESTIMONY OF JESSE DOWNS**

**Jesse Downs**, having been duly sworn, did testify as follows:

THE COURT: Have a seat sir. The only rule is to make sure you allow the attorneys to finish their question before you start answering, okay.

MR. DOWNS: Yes.

THE COURT: If you hear any of the attorneys say the word objection stop talking, got it?

MR. DOWNS: Gotcha.

THE COURT: Okay, Mr. Pembroke.

**DIRECT EXAMINATION**

BY MR. PEMBROKE:

Q. Good afternoon. Just for the record would you give us your name and address?

A. Jesse Downs, 13 Dogstreet, Keedysville, Maryland.
Q. And are you acquainted with or related to Jeffrey Young?
A. Yes, he's my step-father.
Q. Okay. And in fact, you reside on the same property as he does.
A. Yes.
Q. Alright, and how long have you resided on that property?
A. This time been there for about six months.
Q. Over the past, let's just say since 1995, how much time, what periods of time have you lived on that property?
A. I lived there I'd say probably eight years total.
Q. Okay, was that off and on?
A. Yes.
Q. Okay. Since approximately 1995, have you had fairly constant contact with the property?
A. Yes.
Q. Okay. And when you weren't living there why would you have been there and how often?
A. I'd come up to hunt during hunting season. Come up for every holiday. My mom is there so I come up there to see her all the time. I'm there a good bit.
Q. Okay. And to your knowledge who owns the

property?

A. Jeff Young.

Q. And to your knowledge how long has he owned it?

A. Since 1988.

Q. Can you give the Court a description of the property?

A. It's got a long driveway that comes back to the parcel 3 area.

Q. Are you familiar with the plat of the property?

A. Yeah. Yeah.

Q. Okay, so you recognize - - Do you recognize this plat?

A. Um hum.

Q. What is it a plat of?

A. Jeff's property.

Q. Alright, will you come down and point to the areas that you're going to be referring to in terms of your description? (Witness steps down to look at easel)

THE COURT: And we're looking at plat 2499.

A. Yeah, this is the driveway entry in. So, you come back, go down the driveway here, and the house is over here.

Q. That would be turning right?

A. Yeah, at the corner.

Q. Okay.

A. Go right and go down to the driveway. There's a garage at the top of the hill. His house is at the bottom. This is pretty much all hillside right here. It's pretty steep on this side of the driveway until you get down to the creek. And then after you cross the creek it's all pretty much flat over here. And then his property line is the railroad tracks.

Q. Alright, what about, what about to the left of the drawing?

A. If you go to the left, he used to maintain this area.

Q. Well, but what is it?

A. It's an old road that went through there. Right now, it's just growed up.

Q. Alright can you - - When you first saw - - When you first saw that, that piece of property, can you describe the condition it was in when you first saw it?

A. When I first saw it, it was completely overgrown. And then - -

Q. When you say completely overgrown were there mature trees on it?

A. I mean mature for that area, yes.

Q. How big around?

A. It was a couple of them like that (indicates).

THE COURT: Indicating?

A. Eighteen inches.
Q. Okay, and how tall?
A. Maybe twenty-five, thirty feet, some of them.
Q. Okay, and how many of them were there?
A. Um, a few dozen going down the fence line.
Q. Okay, approximately if you had to - - Approximately how many feet long is that stretch?
A. All the way to the back, uh, I don't know, maybe a hundred feet or so, all the way to the back maybe.
Q. Alright, and when did you first see the property?
A. My first time going there was in when I was eight, so I guess '89.
Q. And when you first went there was Jeff living on the property?
A. Yes.
Q. Okay. You can resume your seat, thank you. (Witness steps back up on witness stand) Now, there's a house on the property?
A. Yes.
Q. Okay. And can you describe the condition of the house when you first saw it?
A. It was unlivable at the time. So, he had a, he had a motorhome or camper that he stayed in on the property right by the house.
Q. What about the condition of the house made it

unlivable?

A. Just four walls, didn't have any plumbing. It wasn't insulated. It had animals in it, snakes and racoons and - -

Q. What about the rest of the property?

A. The rest of the property was, I mean, Jeff mowed everything else, like the lane, around the house, across the creek, he maintained all of it.

Q. Alright. Did he work on the house?

A. Yes.

Q. Okay, can you briefly describe what he did to the, particularly the exterior of the house?

A. The exterior of the house he had a mason friend of his came out and repointed all the stonework. On the wooden part they anything that needed replaced they replaced the porch and all the rotten boards that were on it so then it was sealed up.

Q. Were there - -

A. They did the roof, roof on it.

Q. Okay, and how long, how long was the house being rehabbed?

A. Uh, I'd say about four or five years.

Q. And were there times when there were building materials on the property?

A. Yes.

Q. What kind of building materials?
A. Drywall, plaster, lumber, plumbing stuff.
Q. Would it be obvious to anybody caring to look that he was on the property and working on the house?
A. Yeah.
Q. Now, did there - - Did you observe a time when you first started going to the property, were there any, was the property posted?
A. Yes, it was posted.
Q. And how was it posted?
A. It was posted, the whole perimeter of the property was posted and the entry to the driveway.
Q. Alright. How was it posted?
A. What do you mean by that?
Q. With what?
A. No trespassing signs.
Q. Okay, how big were the signs?
A. I guess 10 x 12 or whatever, the standard size I guess.
Q. Okay, and how many were there?
A. Um, throughout the whole property?
Q. Um hum.
A. Approximately thirty-five.
Q. Alright and it was all around the perimeter?
A. Yes.

Q. And what were they posted on?
A. Trees, fence posts, whatever was there to post it on.
Q. Okay, and - -
A. Most of them were trees.
Q. At what level?
A. Eye height.
Q. Okay. Were they conspicuously located?
A. Yeah, you could see them.
Q. Okay. Did - - Court's indulgence. Directing your attention to the area that was parcel 3, you know where that is on the plat?
A. Yes.
Q. Okay. What if anything did Mr. Young use that property for?
A. He maintained it but really didn't use it much. He would mow it off all the time. Every time he did the driveway he used to mow that off until the development was built.
Q. I'm sorry?
A. I said he used to mow it off until the development was built and when the development was built we had kids and stuff coming over and leaving trash so he quit maintaining it and let it grow up at that time.
Q. Okay. Prior to the Stonecrest development being

created would he allow people to cross over that portion of his land?

A. Not that I'm aware of.

Q. Did he ever dis - - Did he discuss with you his intention to basically let the, let the property go back to nature?

A. No, I just noticed it.

Q. Did you ever observe him tell people who were on his property to get off of his property?

A. Yes.

Q. Okay. Over what period of time did you observe this?

A. When I was younger. I think there was a couple people that - - Oh, I guess they had a party two years ago and there was some people coming to the property then at that time and were told to get off.

Q. Okay, prior to that you said when you were younger.

A. Yeah, when I was younger there was a hunter on the property one time and he was like who gave you permission to hunt here and the guy was like and he didn't know and he kicked him off so.

Q. Okay, do you know - - Do you know of other times that he kicked people off for any reason?

A. No, I haven't seen anybody else on there. I

haven't witnessed it.

Q. Okay. Then you mentioned two years ago.

A. Yes.

Q. What happened two years ago?

A. There's a - - I guess they had a party and people were coming through the property to get to the party. And we had to set out at the end of the driveway and tell people that they couldn't come on the property because they were trying to use the driveway to get to I guess Holder's house or whatever.

Q. Okay. Were you present when this happened?

A. Yeah, I was there. Yes, I was there.

Q. Was there a discussion that you observed between Mr. Young and Mr. Holder?

A. Yes.

Q. Okay, can you relate to the Court what happened?

A. Mr. Holder came down the property, was down our driveway with, I guess his video guy, video, some guy videotaping and tried to make a truce with Jeff or something and told him to come to the party and Jeff was like you're trespassing, get off the property and then he turned around and went back the other way and that's all that transpired at that time.

Q. After that did Mr. Young do anything to restrict access to his property?

A. He put a chain up across the, well actually it was a cable. He put a cable up across the driveway that had a lock on it. And had to get out of the car every time I wanted to go in and out the driveway to unlock this cable. And then he put a few posted signs right there at the beginning of the driveway.

Q. Alright, was the - - Has the property always been posted since, since you've been familiar with it?

A. Yes.

Q. Is it still posted today?

A. Yes.

Q. Approximately how many signs are on it today?

A. Approximately thirty-five.

Q. Okay, the same amount?

A. Yeah.

Q. Okay. Now, over the years has Mr. Young ever indicated to you, personally, that he owns this property?

A. Yes.

Q. Alright. Approximately how many times do you think he said that to you over the years?

A. Um, maybe three or four.

Q. Okay, is it your belief he owns the property?

A. Yes.

Q. To your knowledge has Mr. Young lived on the property at least since you've become familiar with the

property?

A. Yes.

Q. Have you ever experienced any or known of anybody who challenged his ownership of the property until Mr. Holder did?

A. No, never.

Q. To your knowledge has anybody else attempted to use any portion of the property prior to Mr. Holder?

A. I think somebody asked him for a right-of-way through his property to go to a little land lock piece that Estes owns, another neighbor now. When it was owned prior to Estes owning it.

Q. But this individual asked permission from Mr. Young?

A. Yes. And he denied it.

Q. Okay. Alright. Has Mr. Young's and the family's presence on the property always been visible to anyone observing the property?

A. Yes.

Q. There was no attempt to hide his or your presence on the property?

A. No.

Q. If you are aware, do you know if Mr. Young is generally regarded in the neighborhood as the owner of this property?

MR. KLINE: Objection.

THE COURT: Sustained.

A. Does that mean - -

THE COURT: Don't answer.

Q. Don't answer. I have no further questions.

**END OF DIRECT EXAMINATION**

THE COURT: From the Defense?

**CROSS EXAMINATION**

BY MR. HOLDER:

Q. Good afternoon, Mr. Downs. Now, you said when the development was built you had spoke about he stopped using, I believe, parcel 3. You know where that is on the plat up there? He said he stopped using that when the development was built?

THE COURT: No, he said he stopped mowing it.

A. I said he stopped maintaining it.

THE COURT: Stopped mowing.

Q. Okay, stopped mowing it. And when, are you talking about Rockingham development?

A. I'm not sure which one is which but the one on the left side of the driveway if you're coming up.

Q. Stonecrest.

A. Stonecrest.

Q. Is the circle, the one that has a circle with all the neighbors that back along the driveway?

A. Yes, that one.

Q. Okay, so, until Stonecrest was built and when you say built was that the roadways or was it when there was houses on there?

A. No, when the houses were built right back in there.

Q. When the houses were there. Okay. So, up until they were built he was mowing a path completely through to parcel 3 all the way to the other end?

A. Not all the way to the other end but a good ways in.

Q. A good ways in. Is that how you knew there was a road on parcel 3 because he was mowing a path?

A. Yes.

Q. Okay.

**END OF CROSS EXAMINATION BY MR. HOLDER**

**CROSS EXAMINATION**

BY MR. KLINE:

Q. Two quick questions. The chain link fence that he put up you said that was on the driveway, that's this spot on the left hand side on Plaintiff's 3, down here?

A. Yes.

Q. That's where the - -

A. There's a cable there.

THE COURT: He called it a cable, not a chain link

fence.

Q. Cable. But that's where was and then he put more signs when he put up the cable down on that end, correct?

A. He put a sign on the actual cable itself.

Q. Okay.

A. There was already two other signs there.

Q. And I think you said you were nine in '88, is that correct?

A. Approximately eight or nine.

Q. Yeah, okay. And when you, I didn't know the timing and maybe you can clarify timing. You said that it was an old road now growed up when you saw it the first time. Was that in '95?

A. No, I seen the property in '89.

Q. In '89 when you were eight or nine. There was an old road that was now growed up?

A. Yeah, it was growed up along the fence row. The property is maintained that he mows. The fence row is the growed up part.

Q. The fence row?

A. Yeah, there's a fence that runs down where it's posted at.

Q. You mentioned parcel 3 by name.

A. Yeah.

Q. How do you know parcel 3 by name?

A. Because I've seen this map multiple times.
Q. You have? Okay. And prior to the last six months that you've been on the property what was the time before that that you were on the property?
A. What are you saying?
Q. I'm sorry?
A. What are you saying?
Q. I believe under questioning from Mr. Pembroke, you said that you had been living at this property for the last six months.
A. Yes.
Q. And that you've lived at the property for eight or nine years during the period of when Mr. Young purchased it in '88, till now, which is thirty-four years?
A. Correct.
Q. So, obviously there was a break. You weren't there the whole time. So, I'm saying, you lived there for the last six months. When was the last time you had a residence at the property?
A. Last time I lived there?
Q. Yes.
A. Um, say when I was seventeen or eighteen.
Q. So, that would be before 2000?
THE COURT: How old are you now?

A. I'm forty. I'm trying to do the math myself.

THE COURT: I was trying to do the math in my head and I can't.

Q. If you were eight or nine in '89, you were born in '80.

A. No, I was born in '82.

Q. '82. So, you would have been seven or eight in '89. And so, if you were there in your teens, your late teens, even calling it twenty, it would be 2002. Is that fair?

A. I still hunt there. I'm still there all the time. Just cuz I didn't live there I'm aware of what goes on the property.

MR. KLINE: Excuse me one moment, Your Honor. I want to confer with my client.

Q. What are you hunting on ten acres? Ten acres is a - - I mean where's the blind? Is there a blind?

A. No.

Q. Or tree stand?

A. I hunt out of a tree stand.

Q. Okay. I'm not a hunter so bear with me. I'm asking a stupid question. A tree stand is up in the air generally to shoot deer as I understand it. Is that right?

A. Um hum.

Q. So, where is the blind?
A. I have a portable tree stand and I put it wherever I want. I just climb up any tree I want.
Q. Okay. So, where generally are you putting up the blind? You're not putting it up on parcel 3 because to the right of parcel 3 is a cliff as I understand it. This huge drop-off.
A. Yeah. But cliffs give you good advantage if I'm hunting from the ground I can set on that cliff and I can shoot the whole way across that bottom.
Q. So, when was the last time you went hunting?
A. Last year, September. From September to - -
Q. Approximately a year ago.
THE COURT: Hang on. September to what?
A. September to January.
THE COURT: Okay.
Q. Okay. Thank you. Sorry.
THE COURT: He was still talking.
Q. I apologize. Were you mobile or at different locations during that three, four month period?
A. Yeah, I move around.
Q. And at that point you weren't living on the property. Your dad just let you come on to hunt?
A. Yes.
Q. I'm sorry, your step-father let's you come on the

land.

A. Yeah.

MR. KLINE: Nothing further.

**END OF CROSS EXAMINATION BY MR. KLINE**

THE COURT: Okay. Ms. Peeples, did you have any questions?

MS. PEEPLES: No, Your Honor.

THE COURT: Mr. Pembroke, did you have any follow-up?

MR. PEMBROKE: No, Your Honor.

THE COURT: Okay. Is this witness excused?

MR. PEMBROKE: Yes, sir.

THE COURT: Sir, you may step down. You're excused which means you may remain in the courtroom or you may leave the courthouse.

WITNESS DOWNS: Alright.

THE COURT: Alright. Thank you for coming back today and sticking around.

**END OF TESTIMONY OF JESSE DOWNS**

THE COURT: Mr. Pembroke, do you have any more witnesses?

MR. PEMBROKE: Um, could you check to see if Ted Ellis is in the hallway please?

MR. KAUFFMAN: Ted Ellis. No, sir.

THE COURT: There's no Ted Ellis in the hallway. Was he under subpoena?

MR. PEMBROKE: He was, Your Honor, but - -
THE COURT: I don't even know who Ted Ellis is.
MR. PEMBROKE: I'm not going to press the issue.
THE COURT: Okay.
MR. JOLIET: He was here all day yesterday.
MR. PEMBROKE: I know.
THE COURT: What's that?
MR. PEMBROKE: He was here yesterday, all day yesterday.
THE COURT: I'm not even sure who he is but okay. What do you wish to do now Mr. Pembroke?
MR. PEMBROKE: I have no further witnesses.
THE COURT: Very well. Just give me a quick second. Okay. The Plaintiff has rested.
MR. PEMBROKE: Yes, sir.
THE COURT: The defense?
MS. PEEPLES: Your Honor, may we take a ten minute break? A five minute break.
THE COURT: We just got going. Is it because you need to confer?
MS. PEEPLES: I need to confer and I need to use the ladies room. I apologize.
THE COURT: Oh, then, five minutes.
(Whereupon at 2:09 p.m., Court was in recess and resumed at 2:20 p.m., and the following occurred in open

court:)

THE COURT: Okay. Is the Defense ready?

MR. HOLDER: Yes, Your Honor.

THE COURT: Okay, go ahead.

MR. HOLDER: Your Honor, having heard the evidence from the Plaintiff I'd like to move for Judgment of a few facts. I don't believe there's any dispute that they're title line is the line drawn on folio 778 from the Plaintiff's stone.

THE COURT: I'm sorry. It's the folio line where?

MR. HOLDER: Folio 778 of the Reeder to Wickline deed 1966 transfer starting from the stone monument. I don't believe that the Plaintiff is with sufficiency, able to describe the land that he's adversely possessed. He's not sure where the fence was. He knows that the owner, well the owner's agent, they was holding cattle on the Butts' property. There was a person that was maintaining the fence. I believe the record reflects that the Plaintiff didn't engage in any acts on the northern end at least of parcel 3 that were open notorious and visible. In fact, there was a cliff and the only he could get up to it was from the end of his driveway and he only mowed a path almost to the end. And then after he had closed it off I don't think there's any disputed fact that I was in possession of the property at the time

he filed this action for quiet title.

THE COURT: You say there's no dispute that you were in possession of the property, is that what you're saying?

MR. HOLDER: Possession of the property after May of 2020, after I came in and cleared it - -

THE COURT: That you became in possession.

MR. HOLDER: Yeah, he kept trying to block me. He couldn't block me off and then finally he piled up so much sticks, he blocked himself off - -

THE COURT: Okay.

MR. HOLDER: - - from access from the property that he couldn't get there.

THE COURT: Okay.

MR. HOLDER: The case law I'd rely on is *Porter v. Shaffer*, 728 A.2d 755, 770, Maryland Court of Appeals. The aspect of putting the land on the ground (unintelligible) reason that the testimony of the surveyor as to location of the boundaries on the ground is necessary because that's to be identified as the land of deed settlement if it ever proves itself. And then I would remind the Court that in this type of misconstruction, mixed constructive and actual possession, the seizing of the land always goes to the one with the better title and Mr. Joliet testified until

2008, the claim for adverse possession couldn't have ripened and the record reflects that Stonecrest was on the site actively developing the Stonecrest site so - -

THE COURT: But not claiming ownership according to 8292 and 8293, Stonecrest was not claiming ownership of parcel 3.

MR. HOLDER: Which would have produced after they were on the site.

THE COURT: Absolutely not.

MR. HOLDER: Okay.

THE COURT: But maybe you, you can try to prove that to me later but - -

MR. HOLDER: Sure. I - -

THE COURT: 8292 and 8293 - -

MR. HOLDER: Isn't up to speed.

THE COURT: - - show that Stonecrest are not claiming ownership of parcel 3.

MR. HOLDER: Okay. Then - -

THE COURT: Keep arguing. I wanted to understand your argument. I don't want to limit you.

MR. HOLDER: Well, that pretty much kills it.

THE COURT: Okay. No, no, no. It doesn't - - Don't give up. You're asking for a Motion for Judgment.

MR. HOLDER: At least on the title lines.

THE COURT: Okay. I'm - - No. I'm not going to

make; I'm not going to - -

MR. HOLDER: Okay.

THE COURT: I'm not going to hand-pick particular issues that have been proven or not proven. What you're asking at this stage is a Motion for Judgment. That means a Motion for Judgment in the entire case.

MR. HOLDER: Oh, okay.

THE COURT: And what that means is you're arguing that with the evidence I have now, everything in evidence, all the testimony, and the inferences that can be drawn from the evidence that Mr. Young cannot win this case. That's what this is a motion for. I'm not - - I'm not willing to hand-pick particular facts that are proven or not. Do you understand the difference?

MR. HOLDER: I - -

THE COURT: You're asking me to make a decision on one particular fact when I haven't heard any other evidence. I haven't heard cross-examination that Mr. Pembroke may provide.

MR. HOLDER: Okay.

THE COURT: The only type of motion my understanding right now at this stage of the case is you want a Motion for Judgment that says Mr. Young loses.

MR. HOLDER: As to parcel 3, yes, I would like a Motion for Judgment. Mr. Young (unintelligible) not

prove actual possession of the property sufficiently to meet his burden.

THE COURT: Okay. Very well. You may have a seat, sir. Does any of the other Defendants wish to add - - Are you adding or are you making your own motion for your own client?

MS. PEEPLES: I make my own motion, Your Honor.

THE COURT: Alright, then hang on a second. Let's go back to Mr. Holder then. The standard on a Motion for Judgment is I am to take the facts and the reasonable inferences therefrom in the light most favorable to the Plaintiff and decide whether they have produced sufficient evidence by which they could receive judgment in this case. Very clearly from the evidence that has been admitted at this point Mr. Young received a deed in 1988 along with plat 2499, which along with his payment of taxes, suggests that he had color of title. There's certainly evidence that he owned that property and used that property in an exclusive hostile manner with notice to any neighbor and so there are facts that would support adverse possession.

With respect to the lane, although you didn't bring up the lane, we'll call it the wagon road, there are facts in evidence that suggest that the wagon road was either abandoned, suffered disuse, terminated by the

construction of Stonecrest or terminated by adverse possession by Mr. Young. And therefore, your motion is denied, Mr. Holder. Ms. Peeples.

MS. PEEPLES: Good afternoon.

THE COURT: Yes.

MS. PEEPLES: On behalf of Deena Holder, Your Honor, I'd like to make a Motion for Judgment as to the use of the wagon road. And first and foremost, I'd like to point, Your Honor, to the standard in that deeds and easements are viewed in their totalitory and the plain meaning of a language that they're written. So, it's the Court's purview to take a look at the actual language of the deed and make a determination based on the actual language of the deed as to what was meant when the wagon road was created.

It's our position that based on the testimony of even Mr. Joliet, that the totality of the verbiage in the wagon road suggests that it is not a mere license but that it was to (unintelligible) to the land it was made by the grantor to the grantee, their heirs, assigns, for the period of forever. So, in that respect, when you look at a right-of-use, um, and I can submit that there are other cases. For example, *Gunby versus Olde Severna Park Improvement Association*, it is Court of Special Appeals 174 Md. App. 189. The language of a deed, the

case involved riparian rights. But the language of the deed included language to the extent that together with the right-to-use in common with the seller and others all of the streets, roads, parks and avenues shown on plat number 2. So, in that case, right-to-use similarly to right-to-use here does in fact convey and easement. Now, the case on itself stands - -

THE COURT: Let me stop you here just for a second. I have a question. Are you asking me to make a decision halfway through the case that this is an easement and not a license? Is that what you're asking me?

MS. PEEPLES: Not halfway through the case. I'm presenting my entire argument as to the wagon road and the easement in this case.

THE COURT: As a motion for judgment?

MS. PEEPLES: Correct. I'm just trying to hit all the points.

THE COURT: Denied. I'll make that decision at the end of the case.

MS. PEEPLES: Okay. Secondly, I think that judgment in this case is appropriate for Mrs. Holder because I really don't believe that the Plaintiff has proved his burden. Again, as I said in my opening statement the Plaintiff has the preponderance of evidence to prove that if there was an easement that it's abandoned. It's not

our job to prove the existence of the easement, it's the other way around.

THE COURT: Right.

MS. PEEPLES: Mr. Young's discovery in his answers to interrogatories, which were admitted into evidence, the direct question was asked as to whether he had any evidence of abandonment of a wagon road. In those interrogatories he did not offer any. The only indication of abandonment was an opinion proffered or testified to by Mr. Joliet on the stand that perhaps the Hutzells abandoned it when they decided to create a different easement onto Antietam Lane. That's speculation. That's a theory. That's not evidence. That is his interpretation of what he believes happened but it's not any factual evidence that gives rise to the point that this easement was abandoned.

THE COURT: Well, there's also evidence though that says that easement, and we'll call it an easement, goes through, went through what is now lots 9 and 10 of Stonecrest. They built a neighborhood - -

MS. PEEPLES: Doesn't mean that - -

THE COURT: - - over top of it.

MS. PEEPLES: They built a neighborhood over top of it, it doesn't mean it extinguishes.

THE COURT: Okay.

MS. PEEPLES: You have to show that the person - -

THE COURT: I'm not going to make a judgment on that right now but.

MS. PEEPLES: I'm just saying that when you look at the construction of the deed and the easement the burden is on the Plaintiff to show that there was some decisive act by - -

THE COURT: By the servient estate.

MS. PEEPLES: Correct.

THE COURT: Stonecrest built a neighborhood on top of it.

MS. PEEPLES: Correct.

THE COURT: Stonecrest was the servient estate and they built a neighborhood over top the wagon road.

MS. PEEPLES: There still is a line there though, Your Honor. I think that's - -

THE COURT: They built it. It's on lot 9 and 10. It's owned by new people now. The servient estate built a neighborhood on top of the road. That's what was testified to today. Okay, any more for your motion?

MS. PEEPLE: No, Your Honor. I think I will - - Taking the - -

THE COURT: Okay taking the facts in the light most favorable to the Plaintiff at this stage of the litigation as it relates to Deena Holder I am reserving

on whether it is an easement or a license until I hear all of the evidence. As to whether Mr. Young as a Plaintiff has presented evidence that would suggest the easement, if it's an easement, has been terminated I believe there is sufficient evidence at this point that I cannot enter judgment in favor of Defendant, Deena Holder.

MS. PEEPLES: Yes, sir.

THE COURT: Yes, ma'am. Mr. Kline, do you have a motion?

MR. KLINE: I do not, Your Honor.

THE COURT: Very well. Who - - Let me ask this. How are we handling it for the Defense today? We have three defendants. Are we all jointly calling one witness at a time or are we starting with Deena Holder's case then Justin Holder's case, then Uncle Eddie's case?

MS. PEEPLES: Jointly.

THE COURT: Jointly. Okay. With respect to calling a witness jointly is it your intention that one of you will be the primary attorney or litigant asking the questions?

MS. PEEPLES: That's what I - -

THE COURT: Okay. We're knot all three asking questions?

MS. PEEPLES: Correct.

THE COURT: When you call one witness one of you is asking questions.

MS. PEEPLES: Correct.

THE COURT: And one of you is doing redirect?

MS. PEEPLES: Correct.

THE COURT: The same person?

MS. PEEPLES: Correct.

THE COURT: Okay. Since you're sitting the furthest in towards the well of the courtroom I'm going to look to you then Ms. Peeples. Who's your first witness?

MS. PEEPLES: Defendant, collectively Defendants, call Barry Levey to the stand.

THE COURT: Okay, is he out in the hallway?

MR. HOLDER: Yes.

THE COURT: Okay, before we bring him in.

MR. HOLDER: Yes.

THE COURT: Remind me of our discussion yesterday about Mr. Levey. Is it possible that Mr. Levey's testimony is going to eliminate the need for the Town of Keedysville corporate designee? Is that a possibility?

MR. HOLDER: I think it's very possible and that's my intention for calling him first.

THE COURT: Alright. Once - - Remind me. That once he's done testifying let's renew this discussion about the corporate designee because I want you all to know I

did issue the order.

MS. VANDERAU: You did.

THE COURT: Okay. I quashed the Kenneth Lord subpoena. I denied the Motion to Quash on the corporate designee and I ordered that the designee be here tomorrow for trial. But if you decide you don't need them I think I would like to let Mr. Kuczynski know out of courtesy of the Court. Okay.

MR. HOLDER: Absolutely.

THE COURT: Okay, let's get Mr. Levey and we'll go forward. What's his name?

MR. HOLDER: Mr. Barry Levey.

THE COURT: Barry Levey.

MS. PEEPLES: Your Honor, may my client be excused? We don't plan on calling her today.

THE COURT: Who. It's probably very uncomfortable for her to sit. Number one, it's probably uncomfortable. Are you wishing to stay? Or do you want to - -

MS. HOLDER: I just want to sit outside during his testimony.

THE COURT: You're allowed to walk out. I'll grant that permission, sure.

MS. PEEPLES: Thank you.

THE COURT: Sure. Alright, before we go any further the gentleman that just walked in the back of the room,

sir?

MR. KIRK: I'm Judge Michael's law clerk.

THE COURT: Excellent. What's your name?

MR. KIRK: George Kirk.

THE COURT: George, I haven't met you.

MR. KIRK: Nice meeting you.

THE COURT: I'll come downstairs and say hi next time.

**TESTIMONY OF BARRY LEVEY**

**Barry Levey**, having been duly sworn, did testify as follows:

THE COURT: Alright, that attorneys are going to be asking you questions. Just make sure you allow them to finish their question before you start answering. If you hear the word objection stop talking. Okay.

MR. LEVEY: Okay.

THE COURT: Alright.

**DIRECT EXAMINATION**

BY MR. HOLDER:

Q. Good afternoon Mr. Levey. Thank you for your time today. Could you please state your name and address for the record?

A. Barry Levey, 9 Dogstreet Road.

Q. How long have you lived at 9 Dogstreet Road?

A. Thirty to thirty-five years.

Q. Can you see the exhibit labeled, it's down here, I'll tell you, it's Plaintiff exhibit 10 on the board?

A. Yeah.

THE COURT: Number 10 being the tax map.

Q. Number 10 being the tax map and are you familiar with where Stonecrest circle is located?

A. I am.

Q. Is that parcel 288 on this tax map what labeled as 280 a lot of lots.

A. If that's what it says, yes.

Q. Okay. And your home is that parcel 418 on this tax map?

THE COURT: Why don't you point to it because I can't read it.

Q. I'm pointing to what it says parcel 418, it's to the west of SW on one writing on the Stonecrest subdivision.

A. Yea.

Q. Is that correct?

A. That's correct.

Q. Okay. I'm going to hand you a photograph and could you tell me if you're familiar with that photograph in your deposition?

(Defendant Justin Holder exhibit 12 was marked for

identification)

MR. PEMBROKE: May I see it, Your Honor?

THE COURT: Hang on a second. Let me see. Is this a new exhibit Mr. Clerk? You've just marked this, right?

CLERK: Yes.

THE COURT: This was not previously admitted?

CLERK: Correct.

THE COURT: Show it to Mr. Pembroke please.

MS. PEEPLES: Number again please?

THE COURT: Justin Holder 12.

Q. Do you remember that document in your deposition?

A. Uh, yeah.

Q. Is that generally a photograph of Keedysville - -

MR. PEMBROKE: Oh, I'm sorry.

THE COURT: I'll let him lead a little bit so we can get it in.

Q. Ok, is that a photograph of a town that you've lived in.

A. Yeah, showing a pictall (phonetic) in my home.

Q. Generally, the area that's on this tax map not specifically but just in a very general like quadrant of Keedysville?

A. Yeah. That's correct.

MR. HOLDER: I move to admit Defendant Justin Holder exhibit number 12.

MR. PEMBROKE: Your Honor, at this point I would object for two reasons. One, don't know what historical time period it depicts. Two, don't know what the relevance is.

THE COURT: Well, I always like pictures.

MR. PEMBROKE: Don't know how old it is.

THE COURT: So, I always think pictures are relevant. But do you have a sense Mr. Holder when this was and how did you get this photograph?

MR. HOLDER: Downloaded it from the National Geological Survey website and then I was able to show Mr. Levey he was able to identify everyone's house, when they were built, the time period in his deposition.

THE COURT: During his deposition.

MR. HOLDER: Correct.

THE COURT: Okay. I'm going to admit it for the purposes that I can have an overhead view. It's admitted.

(Defendant Justin Holder exhibit 12 was admitted into evidence)

MR. HOLDER: It's admitted. And for the Court's edification I did have it printed out in an aerial view.

THE COURT: Okay.

MR. HOLDER: If you could identify Justin Holder's

exhibit - -

THE COURT: Are you asking that be put into evidence?

MR. HOLDER: Well, I was going to get it tagged. Put it on the board. Have him identify that it's the same document and put it into evidence.

THE COURT: Hold it up to me. Hold it up. It's the same document. You can just use it as a demonstrative exhibit. You don't have to add another exhibit. Okay.

MR. HOLDER: Yes, Your Honor.

THE COURT: Mr. Clerk, I'm going to look at this for a while, okay.

Q. And you can step down if you'd like Mr. Levey so you can show the Court where your home is located.

(Witness steps down to easel)

A. It be right here.

Q. Okay, and he's pointing to the area in the top left portion where there's a line going across to a larger line that moves to the right.

A. Um hum.

Q. And are you aware what Mr. Young is using his driveway are you aware where that is today on this picture?

A. I am guessing it would have been - -

MR. PEMBROKE: Objection.

A. I can't guess.

THE COURT: You can't guess.

A. No.

THE COURT: Sustained.

MR. HOLDER: Are you aware where Stonecrest Development would be on this picture?

A. It be all of this.

THE COURT: Noting the sort of triangular trapezoid right in the middle.

Q. Are you aware where the Antietam Creek is on this photograph?

A. It would be this.

Q. So, there's a triangle on the right, a darker shaded line area and is there an area where that Antietam Creek crosses underneath of what would be Main Street today?

A. That would be here.

Q. And are you familiar with this thing they call Antietam Drive in Keedysville?

A. Antietam Drive would be - -

THE COURT: The vertical, vertical roadway coming off of Main Street on the right side of the photo, is that correct?

Q. Correct. And are you familiar given your - - Did you serve as Vice-Mayor for the town of Keedysville for a period of years?

A. Yes, I did. Was that supposed to be a role here?

THE COURT: No, Mr. Levey. Just answer the questions okay.

Q. And I apologize if I'm asking questions that me and you know the answer to but the Court doesn't know so I have to take my time and be specific.

A. Can I sit back down?

THE COURT: Do you have any more questions regarding the photograph?

MR. HOLDER: Yeah, I have to build a foundation for my questions.

Q. So, as your time as Vice-Mayor were you aware where the public road known as Antietam Drive stops (unintelligible)

A. The public road.

Q. Do you know if it's a public road?

MR. PEMBROKE: Objection.

THE COURT: Overruled. If he knows.

A. As far as I know - - As far as I know where the paving ended.

Q. Could you point on the map where the paving ended, or I'm sorry, the arial photograph identified as Justin Holder exhibit 12?

A. Here, right here.

Q. And is that at the edge of where the Stonecrest

development was developed would that be the Stonecrest property boundary on the west side today?

A. Yes.

Q. And were you involved in the development of Stonecrest?

A. I'm not a developer.

Q. Did you approve the plat for the Stonecrest Development?

A. I believe I had a signature on it.

Q. Do you know if the town made any just compensation for the taking of rights incorporeal property rights from (unintelligible) Hutzell during the development process of Stonecrest?

A. I am unaware of that.

MR. PEMBROKE: Objection.

THE COURT: Sustained. Don't answer that question. Do you have any more questions about the photographs specifically Mr. Holder so I can have Mr. Levey have a seat if you don't?

Q. Are you aware - - Have you ever been in behind I'm going to call it lots Ms. Morral. Do you know Ms. Morral?

A. I have met her once.

Q. Okay, when you met her was it behind her house?

A. It was in front of her house.

Q. In front of her house or - -
A. In the subdivision.
Q. Were you ever behind her house in the area where she's fenced in?
A. I have no idea.
Q. Have you been in the - - Let me see how to explain it. Have you ever left out of your house, went up Dogstreet Road and made the first left after Stonecrest?
A. No.
Q. Okay. Have you ever been back this roadway right here?
A. Never.
Q. Okay. Have you ever seen any No Trespassing signs posted on that roadway?
MR. PEMBROKE: Objection.
THE COURT: I think he's indicated he's never been there. So, sustained.
Q. From your house can you see over to this area?
THE COURT: Pointing to the far western edge of the Stonecrest Development from his home.
Q. Eastern.
THE COURT: Eastern, yeah, sorry. Eastern edge.
Q. Have you ever been - - Can you see that from your house?

A. I cannot.

Q. Okay. You can sit down. I'm finished.

THE COURT: Okay, have a seat, Mr. Levey. (Witness returns to witness stand) You can leave it there unless you - -

MR. HOLDER: I'll leave it there.

THE COURT: Okay.

Q. So, when you lived behind beside this was this a farm field generally when you lived there?

A. Yes.

THE COURT: Pointing to the Stonecrest area.

Q. Pointing to the Stonecrest area and was it Carl Rinehart that owned the cows, do you know?

A. I do not know.

Q. Do you know if he was renting or if he owned it?

A. I do not know. He was using it as pastureland wherever it was.

Q. The fencing along that property and your property how was it, was it intact, was it in good shape, did he keep the cows restrained?

MR. PEMBROKE: Objection.

THE COURT: Sustained.

Q. Did you have fencing along your property?

A. I did not.

Q. Okay. But the cows stayed on the Stonecrest

property? They didn't, they never meandered outside?

MR. PEMBROKE: Objection.

THE COURT: Sustained.

Q. Can you tell - - Do you know when Judy Kerns built her house and where she lives on this map? I apologize for having you get up and down.

A. I don't know that it's on that map. But you already know that I guess.

THE COURT: Mr. Holder, let me help you.

MR HOLDER: Okay.

THE COURT: Do you know Judy Kerns, Mr. Levey?

A. I do. The map predates her.

THE COURT: Is her house on that map?

A. It is not.

THE COURT: Okay. Do you know if she built a house it would be in this general area?

A. It would be right along here somewhere.

THE COURT: Okay, so east west of - -

MR. HOLDER: Is that Mt. Vernon Lane?

THE COURT: - - west of Stonecrest, several houses north of your house?

A. I can just barely see her home now from my backyard.

THE COURT: Okay.

A. But this must be pre 1950 or '60.

Q. What on there tells you that it's pre 1960?
A. How there are no homes along this road.
THE COURT: What is the name of that road, sir?
MR. PEMBROKE: I'm sorry, no what?
THE COURT: Homes.
A. Homes.
THE COURT: What's the name of that road?
A. Antietam Drive.
THE COURT: Okay and so were noticing that - -
A. I'm sorry, it's Mt. Vernon.
THE COURT: Mt. Vernon.
A. Yeah.
THE COURT: And you're noticing there are not homes there?
A. Correct.
THE COURT: That are there now?
A. Correct.
THE COURT: And that leads you to a conclusion that this is a photograph of pre 1960?
A. Yeah.
THE COURT: Okay.
Q. Do you have a garage on your property now?
A. I do.
Q. Is that garage in that photograph?
A. It is not.

Q. Do you know what year the garage was built?
A. No, I can't, I don't.
Q. Do you know if this line is an old railroad line? This line that goes diagonal across the bottom right into the north of Stonecrest and that the creek?
A. It certainly looks like it.
Q. Are there bridges where, where it crosses the creek?
A. No.
THE COURT: You mean in the photo?
Q. In the photograph.
A. I don't see any bridges but that's not an easy picture to discern.
Q. Okay. Do you know - - Are the Swopes your neighbor?
A. The Swopes are deceased.
Q. Were they your neighbor at one point?
A. They were.
Q. Okay, is their house on this picture?
A. It is not.
MR. PEMBROKE: Objection.
THE COURT: Overruled. Go ahead, you can answer. Is the Swope's house on this picture?
A. It is not.
THE COURT: Okay.

Q. And do you know what year the Swopes built their house?

A. I do not.

Q. And have you ever went to the been back past the pavement on Antietam Drive or walk back past there?

A. I have.

Q. Have you ever met the predecessors to Deena and Uncle Eddie's, the Hutzells, on have you ever met them when you walked back there?

A. I have not.

Q. Have you ever walked up along the railroad track on this line that follows the railroad track here around to the other end of the road I asked you if you drove up? Have you ever been up to the property that way?

THE COURT: I think we're asking along the northern line, that would be the northern line of Stonecrest. Is that right, Mr. Holder?

Q. Yea, along the northern line and down the eastern line, have you ever walked down that path?

A. I think you and I walked - -

THE COURT: You may sit.

A. - - here but I don't think we went much further.

THE COURT: Showing that back corner of Stonecrest.

Q. Is there a big rock pile there?

A. I do not know.

Q. Okay. What do you remember about the back of that property? What did it look like when we walked it?

A. The I guess the - -

MR. PEMBROKE: Objection. We don't know when he walked it.

THE COURT: Can you give me a time frame Mr. Holder as to when the two - - Ask a question to get me to a time frame as to when the two of you walked.

Q. Do you know the approximate date that you walked that path with me?

A. It's been at least four years, three or four years. It was the bridge (unintelligible) is what I recall.

Q. Okay.

A. That's left of the train tracks.

Q. Okay. I don't have any further questions for the witness.

THE COURT: Okay. Mr. Levey have a seat again.

**END OF DIRECT EXAMINATION BY JUSTIN HOLDER**

THE COURT: Mr. Pembroke, do you have any questions for Mr. Levey?

MR. PEMBROKE: Yes, Your Honor.

THE COURT: Okay. Stay where you are Mr. Levey. I'll see if I need to get you down.

**CROSS EXAMINATION**

BY MR. PEMBROKE:

Q. This exhibit shows among other things the area where Stonecrest is now situated?

A. Yes.

Q. And when was Stonecrest developed?

A. I'm going to say it's been the last ten years the best I can tell you.

Q. And does the Stonecrest Development now encompass the area where this path or lane is depicted on this photograph?

A. Is it inclusive?

Q. Yeah, or is Stonecrest just in this, roughly I don't know, triangular shape here?

A. It doesn't take on that driveway or whatever that is there. It's within the boundaries of that perimeter that you're looking at.

Q. This right here? (indicates)

A. Yep.

Q. What's over here if you know? I guess that would be - -

THE COURT: Pointing to the left of the left of the photograph as it's standing vertically.

A. I would say that's Rockingham.

Q. Do you know when Rockingham was developed?

A. It was before my time or, um, late '90's, mid to

late '90's.

Q. Is it roughly the same size as Stonecrest?

A. Oh my, no.

Q. Pardon?

A. No.

Q. Larger or smaller?

A. Much larger. Much larger.

Q. Okay. Alright, thank you. No further questions.

**END OF CROSS EXAMINATION BY MR. PEMBROKE**

THE COURT: Any redirect from the Defense?

MR. HOLDER: No. You're excused Mr. Levey.

THE COURT: Okay. Mr. Levey, thank you for coming today. I appreciate it. You are free to leave the courthouse. Was he under subpoena?

MR. HOLDER: Yes, he was.

THE COURT: Okay. And he's excused from the remainder?

MR. HOLDER: He is excused from the remainder.

THE COURT: Very good. Thank you, Mr. Levey.

MR. LEVEY: You're welcome.

**END OF TESTIMONY OF BARRY LEVEY**

THE COURT: Okay. With that testimony from the Defense, your thoughts then on the need for the corporate designee tomorrow?

MR. HOLDER: May I be heard for just a second?

THE COURT: Of course.

MR. HOLDER: Well, Your Honor, if it's going to be your position that you're going to overrule or sustain an objection if I asked the town of Keedysville if it's their intention to take property rights or if they provided just compensation on proving the plat, I don't know that I need to call the town of Keedysville.

THE COURT: My sustaining of the objection is I don't see how that is relevant to the issues that are before me in this case.

MR. HOLDER: Well, you denied a motion for judgment based on the fact that we built a neighborhood and that's why I think I should Keedysville what was the intention.

THE COURT: Part of the reason I denied it.

MR. HOLDER: Well, correct. I'd like to knock that out, so I'd like to keep my subpoena for the Town of Keedysville.

THE COURT: I understand. I understand. Look, it's your subpoena.

MR. HOLDER: Okay.

THE COURT: I didn't quash it.

MR. HOLDER: I know.

THE COURT: So, I've already directed the corporate designee to be here. The only question is do you want me to release them or do you want me to have them here? If

your answer is you want them here, I'm standing on my decision that I have already ordered them to be here.

MR. HOLDER: Yes, I'd like them here please.

THE COURT: Okay.

MR. HOLDER: Thank you.

THE COURT: Would you call Mr. Kuczynski. Read him that order. Tell him that the testimony of the witness today did not change that order. The order stands as is.

MS. VANDERAU: Okay. Okay.

THE COURT: Thank you. And we start at 9:00.

MS. VANDERAU: Okay.

MR. HOLDER: Your Honor, I'm just going to call myself as a witness.

THE COURT: Okay. Give me one quick second before you do that. Okay.

MR. HOLDER: Yes.

THE COURT: Okay, the next witness is Justin Holder.

**TESTIMONY OF JUSTIN HOLDER**

**Justin Holder**, having been duly sworn, did testify as follows:

DEPUTY: State your name and address for the Court please.

MR. HOLDER: My name is Justin Holder. My address is 308 West Chaplin Street, Sharpsburg, Maryland.

THE COURT: Okay, give me a second here, Mr. Holder.

Alright, counsel, are you asking questions of Mr. Holder?

MS. PEEPLES: I'm going to let Mr. Holder provide the narrative, Your Honor.

THE COURT: Okay. Give me a second. Usually when I have a pro se person I ask about the first ten, twenty questions to get them rolling and then I let them tell me what they want to tell me. But I'm thinking in this case you're probably pretty prepared to tell me what you want to tell me. Is that fair to say?

MR. HOLDER: It is but I would like you to stop me if there is something you don't, you need clarification and I would like to indulge the Court to make sure that you specifically understand what I'm trying to explain to you. If you feel the need I don't - -

THE COURT: I appreciate you saying that. And I think that's fair. Okay.

MR. HOLDER: Okay.

THE COURT: So, you are Justin Holder. You are a Defendant in this action.

MR. HOLDER: Yes.

THE COURT: As we already talked about today, you are not making claim of ownership of Parcel 1.

MR. HOLDER: Correct.

THE COURT: You are not making ownership, claim of ownership of Parcel 2?

MR. HOLDER: Correct.

THE COURT: Okay. What do you want to tell me?

MR. HOLDER: I was born and raised in Keedysville, Maryland, 1977. When I was in sixth grade, I took over a paper route, had a bike, delivered papers around Keedysville. I rode my bike. I'm very familiar with the land and the area. I was probably one of the children that Mr. Young saw riding in the area of Parcel 3. There's other public roads, such as Mt. Hebron Road. My cousin Joe Young lived at Eakles Mill.

MR. PEMBROKE: Objection.

THE COURT: Overruled. Go ahead.

MR. HOLDER: We would use and they were in, you know, bad shape. They were in disrepair, you know, nobody was maintaining the roads. But it was common knowledge that there were public ways that we could use as kids and we used them whether people told us to or not, whether we saw No Trespassing signs or not. We used them openly, notoriously, continuously since I was a kid.

THE COURT: Wait a minute. Let's go back to the objection. I had made a ruling in this case previously, I think during the pre-trial conference that we weren't, this case is not about roads - -

MR. HOLDER: Okay.

THE COURT: - - that you may claim exist and that

you're trying to open up, right? And what we talked about - -

MR. HOLDER: Yea, let's strike the word - -

THE COURT: No, no, it's okay. I just want to make sure you and I are on the same page.

MR. HOLDER: Let's strike the word roads.

THE COURT: Because that's a government process.

MR. HOLDER: Correct.

THE COURT: Not the judicial process. It's a legislative process, not a judicial process. What I did indicate during the pre-trial conference is that the wagon road, which comes out of the 1872 deed as an easement or a license that is fair game.

MR. HOLDER: Okay.

THE COURT: Okay.

MR. HOLDER: So, let's change the word - -

THE COURT: So, the objection is overruled because I think you're giving me a little bit of background of what it was like back in 1981, '85, when you were delivering papers.

MR. HOLDER: '85, yea.

THE COURT: But to the degree that you're going to then try to go into that there are roads out there and they should all be opened up, we're not going there. That is not part of this trial.

MR. HOLDER: Yea, I didn't mean to go there.

THE COURT: That's okay.

MR. HOLDER: Let's call them paths because I think that fits that there's a path.

THE COURT: Okay.

MR. HOLDER: And, uh, before Rockingham Development was developed, myself, Carlton Haus, James Ward, I believe even Mr. Young might have road four-wheelers on where it is Rockingham now, ATV's. I took, I had a CR250 dirt bike, you know, I was a kid, I rode it down Main Street. I rode it down. My wife lived beside Stonecrest Development all of her life. So, I met her in 2001. My mother lived at the north end of Keedysville. Sometimes I would walk up Mr. Young's driveway and party as Mr. Joliet would say on the way.

THE COURT: As young people are known to do. You're not shocking me. It's okay.

MR. HOLDER: I didn't ever leave any trash.

THE COURT: That's fine.

MR. HOLDER: I didn't vandalize anything. If I did see a piece of barbwire, I would have pulled it down out of my way. And the fences were in disrepair along the roads. You couldn't tell where some of them were. 2001 was the last time I was ever on Parcel 3 prior to 2020. I remember walking it. I remember seeing two distinct

paths possibly where Mr. Young was mowing. And I don't remember any large mature trees in the way and I could walk all the way down to what I now what we call Cost Crossing. I would walk back to the railroad bridges.

THE COURT: Alright, let me stop you. You call something Cost Crossing. Where is Cost Crossing in your mind?

MR. HOLDER: It's the beginning call for that wagon road easement. It says it starts at a point called Cost Crossing, which would be where the Holder and Eddie's properties cross the railbed.

THE COURT: Okay.

MR. HOLDER: So, it's sort of you could turn right or possibly left there.

THE COURT: Okay, I understand.

MR. HOLDER: The Richard Jolias who was Benjamin Estes predecessor was my Cub Scout leader. My brother was friends with Collin and Chris Santucci. They played in the creek down there all the time. We ran the property. It was vacant, you know.

THE COURT: Which property?

MR. HOLDER: Basically, the back of the Estes property that he's litigating. The Young property we had paint ball wars. Just it was a vacant piece of property. Kids played army there and, you know, up until basically

when there was a time in my life that I wasn't in Keedysville for a few years and when I came back Stonecrest Development had developed the site and then if I needed to go to my mother's house walking home, I just cut through Stonecrest Circle because it was shorter and I was lazy.

THE COURT: Home from where?

MR. HOLDER: Home from my wife's house.

THE COURT: Okay.

MR. HOLDER: So, I don't ever remember seeing any No Trespassing signs posted along what is the – -

THE COURT: What years, what time frame - - And I'm sorry to jump in. What time frame are you saying that there were periods that you would leave your then girlfriend's home, right?

MR. HOLDER: Right.

THE COURT: And then walk across Stonecrest. What time frame are we talking about?

MR. HOLDER: That would have been about - - Well Stonecrest wasn't built out that I would have walked across it till after 2005. But prior to 2005, the last time I had walked that way home was 2001 I remember.

THE COURT: From her house?

MR. HOLDER: From her house. Yes. And - -

THE COURT: I'm not going to ask you when you started

dating because if you don't have the correct day and year that's going to be a problem.

MR. HOLDER: It was my birthday, Your Honor.

THE COURT: Okay, that' good. He knows. Okay. So, 2001 is really the last time you remember walking around Parcel 3 and maybe over Stonecrest before it became, before they even started developing Stonecrest. It was just a field.

MR. HOLDER: Correct.

THE COURT: Okay.

MR. HOLDER: And I wasn't around for a couple of years. I came back and they had the circle built so I never went over there again until 2020.

THE COURT: Never went over where again?

MR. HOLDER: I know, I'm sorry.

THE COURT: That's okay.

MR. HOLDER: Over to Parcel the Parcel 3 area.

THE COURT: Okay, until 2020.

MR. HOLDER: Till 2020.

THE COURT: Okay.

MR. HOLDER: And I had found one No Trespassing sign at the very north end of Jeff's property, but it's well down the hill where Parcel would be. It's a white sign. It's very old. It says No Trespassing. It's posted about ten feet high. I'd say it's at least a good

twenty-five feet down the hill from what I call the BQT stone. And then comes 2020 we get into a property dispute with Benjamin Estes. I look up deeds. I find 659580, which is what we call the Butts Parcel 3 and happens to have all these lands of Samuel Cost and it relates back to the old title deeds. And these old title deeds are always hard to find because there's like these indexes in the land records that you have to look up. You can't go past 1963 using the Maryland Land Rec site. So, I just got lucky and I found these old deeds and I found a deed with a right-of-(unintelligible). Well, I guess because I provided an affidavit Mr. Greivell asked Mr. Steich for a title report. We found there was an easement and - -

MR. PEMBROKE: Objection.

MR. HOLDER: We found what we believed to be an easement that benefited the property and I was attempting - -

THE COURT: The objection is sustained.

MR. HOLDER: I was attempting to get it surveyed. I went around the Stonecrest neighborhood. I knocked on everybody's doors. I explained to them what was going on. I invited them to a party. I asked them, you know, if we could get it surveyed and some of them made certain comments that created a law enforcement problem for me.

The law enforcement came out. I showed them some title work. We were working on what is the little white triangle behind, it's on plat 8293.

THE COURT: Let's get 8293 up there if you're going to talk about it.

MR. HOLDER: Okay. (Witness steps down to easel)

THE COURT: You can take the other ones down if you wish.

MR. HOLDER: So, when I say the little white triangle, there's a line right here. It's dotted.

THE COURT: Okay, and we are, we are - - Are we within the Washington, within the Forest Conservation easement?

MR. HOLDER: We're to the east of - - We're right outside. There was a well-worn path that I found prior to May 29th, the day I had the equipment. There was a well-worn path that went about right here but I found the survey markers and they were, they were to the south of the path. The path was to the, what is labeled here as Maryland Department of Natural Resources. Up here's the abandoned railroad.

MR. PEMBROKE: Objection. He hasn't laid a foundation for survey markers.

THE COURT: Well, he's indicated that he was the one walking back there.

MR. PEMBROKE: Well, I understand but we don't know that he knows what a survey marker looks like.

THE COURT: Sustained.

MR. HOLDER: I was shown survey markers by Mr. Frederick when I purchased the property. I was shown some survey markers by Mr. George Nagle when he came out and measured the property prior to May and I found what I believed to be a survey marker because it was a metal pin with a cap on top of it and it still had a little bit of a pink ribbon on it right here.

THE COURT: And you're right in the white triangle.

MR. HOLDER: I'm in this white triangle and I'm working behind the Morral house. She comes out to the fence prior to me working and accost me.

THE COURT: And this was before May 29th?

MR. HOLDER: This is, this is on May 29th.

THE COURT: Oh, okay. I just want to be sure I know when we are. So, we're on May 29 of 2020.

MR. HOLDER: Yes.

THE COURT: Okay.

MR. HOLDER: And a hydraulic line broke on the we had a track loader with a pincher kind of pulling brush out. And we were cleaning up around here because we found a stone and the first call in the wagon road says to a stone and I was walking with Mike Stotler and Douglas

Zimmerman. It was early in the morning before we even started and I said, hey guys, right around here be careful. There's a stone marker. And - - The stone marker was located not by me. But somebody points it like that. I said that's exactly what we're looking for. Don't run it over. That's where this goes. So, we were in here. I was stopped by the Natural Resources police. Well, I was stopped by the Washington County Sheriffs. They asked to see title work. I provided that. I walked off where Cost Crossing was. We showed them the stone markers. We showed them the easement.

THE COURT: And the title work you're showing them is what?

MR. HOLDER: It was a 1963 deed to Hutzell that had the wagon road spelled it in metes and bounds on it. And it was this Stonecrest plat.

THE COURT: Okay.

MR. HOLDER: And we showed them that right here there was an area where they couldn't add fences. We showed them that this line was the same bearing and distance as the first line of the wagon road and that this line was a similar bearing and distance.

THE COURT: So, that the wagon road based on what you were showing authorities on that day - -

MR. HOLDER: On that day.

THE COURT: - - The wagon road goes into lot 9 and lot 10.

MR. HOLDER: Yes, by the metes and bounds description.

THE COURT: Okay. Okay. Keep going.

MR. HOLDER: Okay. And the Natural Resource officer came in and he said, hey, you know we think you're intruding on our property. We had a discussion. I said I don't believe I am. And he said well can you drive out of here. And is said can we go around and work on the other side. They said yes. So, we come around. We start working on this side. Mr. Young comes out and you heard the rest of the story.

THE COURT: Okay.

MR. HOLDER: And then from the period of the summer I continued to go in. I found a stone marker back here on June 20th.

THE COURT: Back near the far western corner of Stonecrest.

MR. HOLDER: Yeah, which I believe to be the stone marker that was the beginning of Plaintiff's exhibit 8. There was a stone marker. I was looking for and actually it would have been on the 24th, I misspoke. On the 20th was the day we had the party and I went down and talked to Mr. Young at the end of the lane. And the 24th I saw

it because on that day I remember - -

THE COURT: 24th is the day that you had the bobcat.

MR. HOLDER: No, the 29th of May is the day we had the bobcat.

THE COURT: Okay.

MR. HOLDER: Then on the 24th of June, I located what I believed to be this (unintelligible) stone. I called Mr. Nagle and Christine Morral was in her yard and observed me calling Mr. Nagle and the record in the peace order trial we had reflects that she heard me call Mr. Nagle and explained to him that I found the stone. At that point I haven't - - I'll introduce that evidence later.

THE COURT: Okay.

MR. HOLDER: Um, and then from that point on in the summer I constantly came down through the property two or three times. It was COVID. I wasn't working a lot. Came down through the property just walked, just looked for markers, looked for stones. Walked down along this part of Parcel 1. Walked up what would have been Dogstreet Road coming up. Dogstreet Road is actually off this property but it's there I would walk up looking for a stone marker that was on at the end of the sixth line beginning the seventh line on that the Reeder deed before he gave it to Mr., to Mr. Young. I found it. There was

a deed before the property split up. And you if you heard Mr. Downs testify to a parcel that Estes owned the cross that he had a right-of-way to. Those were - -

THE COURT: A right-of-way was asked for. Mr. Young denied it.

MR. HOLDER: Correct.

THE COURT: Okay.

MR. HOLDER: I believe it's on their deed, the deed that was admitted in evidence as liber 885 folio 110. It's for farm machinery (unintelligible).

THE COURT: It's to go from gate 1 to gate 2 - -

MR. HOLDER: Correct.

THE COURT: - - on Parcel 1.

MR. HOLDER: Correct.

THE COURT: But I'm not sure that that's the same requested easement - -

MR. HOLDER: Oh, I don't believe it is.

THE COURT: - - that, that the Estes parcel asked for. That Mr. Downs testified about.

MR. HOLDER: No, there's nothing in the record.

THE COURT: Okay.

MR. HOLDER: And that's pretty much all I have. So.

THE COURT: Okay. Alright. Have a seat. (Returns to witness stand) What else do you want to tell me?

MR. HOLDER: I mean, I think that's, you know, I

generally know about the property.

THE COURT: Okay. Mr. Pembroke, any cross-examination?

MR. PEMBROKE: Yes, Your Honor.

**CROSS EXAMINATION**

BY MR. PEMBROKE:

Q. You said that when you were younger you would walk up Mr. Young's driveway, is that correct?

A. Or ride my bike.

Q. Now was that before or after he owned it in 1988?

A. Probably both.

Q. So, some of it would have been before?

A. Some would have been before.

Q. Now isn't it true that at least on one account on one occasion you encountered him and he ejected you from the property?

A. I encountered him. I don't know that he ejected me.

Q. Well didn't he tell you to get off. You threw rocks at his truck.

A. I roosted my motorcycle and some of them may have hit his truck, yes.

Q. That was after he told you to get off, right?

A. I guess.

Q. Okay. Alright.

A. That would have been down on Parcel 1, Mr.
Q. Um, now you said that you had not, there was a time that the last time you were on Parcel 3 other than 2020 was in 2001, correct?
A. That's correct.
Q. Okay. And why were you on Parcel 3 in 2001?
A. Just walking home from my girlfriend's house.
Q. Now you said that you were not in Keedysville for a few years. What years were you not in Keedysville?
A. Um, she was living in Sharpsburg and I moved in with her. So.
Q. What years were that?
A. Um, basically from 2001 on.
Q. I'm sorry, 2000 - -
A. From 2001 on.
THE COURT: And she is Deena Holder.
A. Yeah. And she's Deena Holder. Yes.
THE COURT: Okay.
Q. Um, well after 2001, you did spend some time incarcerated did you not?
A. It's been further than fifteen years. I don't know if that's relevant.
THE COURT: Overruled.
A. Yes, correct, correct.
Q. Where were you?

A. Jessup, Maryland.
Q. And when were you in Jessup?
A. I was May of 2002 through August 2003 I got moved to MCTC.
Q. How long were you at MCTC?
A. About three months. It was a pre-release center.
Q. Okay. And you indicated that you did see one No Trespassing sign that was old and faded on Parcel 1?
A. Correct.
Q. Okay.
A. And I believe that's still there today.
Q. Now, you said you've been constantly going down the property and walking up Parcel 1, is that correct?
A. I have walked up Parcel 1 a few times. I definitely walked down it on March 24 in this case. But prior to that I walked down Parcel 1 a few times after May of 2020 looking for the other end of - -
Q. Did you have Mr. Young's permission to be on Parcel 1?
A. No. No, I did not.
Q. Do you claim any right to be on Parcel 1?
A. I do but they're not relevant to this case.
Q. Well, forgive me but if you're not contesting Mr. Young's ownership of Parcel 1 and you don't have his permission to be on Parcel 1, why is that not relevant to

this case?

A. You can have fee simple ownership to a property that's encumbered by other rights whether they're prescriptive by deed, right-of-ways, public easements and grows?, prescriptive use of the public, some of these evidences we've disqualified from this case. And the rights that I rely on are based upon that type of evidence.

Q. No further questions.

**END OF CROSS EXAMINATION**

THE COURT: Okay.

MR. HOLDER: I'm not going to redirect myself. (Laughter).

THE COURT: Have a seat.

MR. HOLDER: Thank you.

**END OF TESTIMONY OF JUSTIN HOLDER**

THE COURT: Next witness for the Defense?

MS. PEEPLES: Call Deena Holder to the stand.

THE COURT: Okay. Mrs. Holder.

**TESTIMONY OF DEENA HOLDER**

**Deena Holder**, having been duly sworn, did testify as follows:

**DIRECT EXAMINATION**

BY MS. PEEPLES:

Q. Good afternoon Mrs. Holder. Can you please state

your name and address for the record?

A. Um, Deena Adrian Holder, 308 West Chaplin Street, Sharpsburg, Maryland.

Q. And do you own property in Keedysville?

A. I do.

Q. What property do you own in Keedysville?

A. 25 and 28 Antietam Drive.

Q. And when did you come into ownership of 25 and 28 Antietam Drive?

A. Um, we first bought 28 April, I can't remember the dates to be honest with you.

Q. Can you recall a year?

A. Um, it has been four years ago. I don't know. It's kind of all been a blur.

Q. How did you end up purchasing 28 Antietam Drive?

A. Well, as my, as Mr. Holder has said I was born and raised in Keedysville. Um, I lived at 9 Dogstreet Road up until about 1999 when I moved and rented a house down on Main Street. Um, I was married previously, and my husband and I bought a house in Sharpsburg, but it was always my desire to live in Keedysville close to my family. So, one Christmas we learned that this property that was right back the alley from my parents, um, was for sale and we kind of had a dream that we were going to move our family over there and we were going to renovate

the property and, sorry. It's just kind of emotional.

Q. Take your time.

A. But we were going to renovate the property and move our family back there so that they could walk back streets to my mom's. Their other grandparents were at the other side of town. I mean we've lived there, born and raised there. Just wanted to be back close to my parents. So, when we found the property it was absolute beautiful back there. It was private. It was close and we, um, had approached, we had found out that it did not have water and sewer and we had approached a member of the town and asked if they thought it would be an issue to be able to get it back. They said no. So, we bought property thinking that we were going to move our family back there.

MS. PEEPLES: May I approach?

THE COURT: Yes.

MS. PEEPLES: Can you mark this as Deena Holder exhibit - -

MR. PEMBROKE: I'm sorry, what number?

MS. PEEPLES: 4 please.

MR. PEMBROKE: Thank you.

MS. PEEPLES: 5, I'm sorry.

(Defendant Deena Holder exhibit 5 was marked for

identification)

MS. PEEPLES: May I approach?

THE COURT: Yes.

Q. Do you recognize that document? Take your time to take a look at it.

A. Okay.

THE COURT: Do you know what that is?

A. Yeah, it's the deed between myself and Carl French for the property at 25 Antietam Drive.

THE COURT: 25 Antietam.

A. Yes.

Q. And what is 25 Antietam. Is there - - What's currently located at that property?

A. Um, it' a little yellow house that we bought.

Q. And you currently own that property today?

A. Yeah.

MS. PEEPLES: Move that deed into evidence.

THE COURT: Any objection?

MR. PEMBROKE: No objection.

THE COURT: Deena Holder number 5 is admitted. It is the deed to 25 Antietam Drive. Curious about the date counsel on that deed.

(Defendant Deena Holder exhibit 5 was admitted into evidence)

Q. What is the date on that?

THE COURT: You could have just told me.

A. I'm sorry. It's August 2018.

THE COURT: Okay. We bought this property a little bit lather than we bought the other gray house.

THE COURT: Okay.

Q. So, do you currently own 28 Antietam Drive?

A. Yes.

Q. Okay, and how did you acquire 28 Antietam Drive?

A. So, that was the first house that we bought. The gray house we though that we would move into and then there was a little yellow house on the property that was right back there with it, um, and after a while we decided that Mr. French was having issues getting utilities put into that house too and he was just kind of frustrated and we offered to buy the property from him. We would have intended probably to buy both of those properties at the same time had they been sold together when we had originally tried to but the house that, um, 28.

Q. Was that property originally transferred to Uncle Eddies or you?

A. No. So, 25 is to me and then what had happened was Uncle Eddie's was originally part of 28 Antietam and the town we wanted possibly build a house on that back

area and wanted to convey the property with another area and they told us we had to subdivide.

Q. So, did you in fact subdivide the property?

A. We did.

Q. What I'm showing you - -

THE COURT: And counsel, if these are all land records you can lead a little bit with questions.

MS. PEEPLES: I appreciate it.

THE COURT: That's okay. Go ahead and lead a little bit.

Q. What I'm showing you I've marked as Deena Holder exhibit number 26 (sic). Does this represent a confirmatory deed that you obtained from Mr. French?

(Defendant Deena Holder exhibit 6 was marked for identification)

A. Yes.

Q. And can you explain to the Court how that deed came about?

A. Um, I believe it was just to firm up the deed from before.

Q. And in both the confirmatory deed and the original deed, did those deeds list a right-of-way over a wagon road, correct?

A. Correct.

MS. PEEPLES: Move Deena Holder's number 6 into evidence please.

THE COURT: Any objection?

MR. PEMBROKE: No objection.

THE COURT: It will be admitted. And, counsel, is that confirming the 25 Antietam Drive deed or was that confirming after there was a subdivision and replat? Do you know?

(Defendant Deena Holder exhibit 6 was admitted into evidence)

MS. PEEPLES: It's the 25 Antietam.

A. Yes.

THE COURT: 25 Antietam.

A. I call them the yellow house and the gray house to keep it straight.

THE COURT: So, it's the yellow. We're confirming the yellow house?

A. Correct.

THE COURT: Got it.

Q. Was here a deed made to confirm the gray house to you or was that under Uncle Eddie's?

A. That would be under Uncle Eddie's once we subdivided the gray house property the portion of that had gone with Uncle Eddie's.

Q. Okay. Can you describe what the property looked like 25 Antietam Drive when you purchased it?

A. So, that's the yellow house.

THE COURT: It was yellow. (Laughter)

A. Um, it was just a little cottage. We went in and we did some minor upgrades inside, you know, touched up paint and stuff like that and it was that that place was actually a little bit better shape property wise outside than the gray house of 28 Antietam. The house at 28 Antietam, the gray house, was a ton of junk was left from the previous owner. They had dumped stuff over the side of the hill that was going down into the creek. We spent a lot or time just fixing up the outside, clearing stuff off.

Q. Did you ever reside in that house?

A. No.

Q. Who resides in that house?

A. We have tenants that reside in both of those houses.

Q. Did you have an occasion when you purchased 25 Antietam Drive to walk around the area and see what the general area looked like?

A. Yes.

Q. Can you describe for the Court what the general area looked like around the railroad tracks and Antietam

Drive?

A. Um, so, where do you want me to start with it because when you come into Antietam Drive it ends, the paved road ends, you go down a slump that is being washed out by the storm water pond in Stonecrest. And you go up the hill in and you come to the railroad area. That was not being maintained by DNR. It was overgrown. There was tons of trash there. Um, you came onto the property and, um, towards the left then is the yellow house and you go down back behind it, a backyard that goes down to the creek. And then, of course, as you go up the hill you go into the gray house, which is bordered by the railroad area and then the back side what now has ended. Before we had conveyed it, it went completely around in kind of a little peninsula and it was bordered all sides by the creek.

Q. When did you first learn that your property, 25 Antietam Drive, had or was purported to have access over a wagon road?

A. I think like we had like saw something mentioned at first or I don't remember exactly but I do know that once we started to have an issue with Mr. Estes that we began researching more closely out titles - -

MR. PEMBROKE: Objection. It's non-responsive. The question was when did you first learn of the wagon road.

THE COURT: Overruled. She's explaining that her first recollection is when the Estes issue ripened, so. I think she's trying to answer it the best she can.

A. Correct. So, we started to research our property and found that there were some things in the title that we weren't aware of and that's when we came to the recollection that we had that there was this road, wagon road in existence. So, it would have been after, like right after Estes.

Q. Did you make any attempt to locate the wagon road on your own?

A. Um, we at that point then as we started to research and look into it, um, we had hired a surveyor. We were trying to get it surveyed just somebody to come in and tell us exactly where it was at.

Q. And - - Court's indulgence. When you hired the surveyor when you started to look for the wagon road can you describe for the Court what that area looked like to you when you saw it?

A. So, from our end of it right as you come in to right before you cross the railroad area, we noticed that there was a space of land that kind of went up in between the railroad bed and Stonecrest. There was a path that was pretty wide that went up that way and it looked like something had been there before, that there had been a

road there before or some sort of path or and so.

Q. Do you recall when about that was, the date?

A. Um, well we always - - When we bought the place, we always thought it was odd that it looked there but that was, I don't know, it was right, it was soon after we had started researching the Estes and that's and yeah, I'm not sure exactly.

Q. Can you define for the Court what year approximately that you did the research in relation to the Estes case?

A. Oh, then, so, he, it would have been around May of 2020 that we started.

Q. So, when you're describing what you saw as a path that went kind of from the railroad easement up a hill did it look like a path prior to Mr. Holder using any kind of bobcat or machinery on the path?

A. It defin - -

MR. PEMBROKE: Objection.

THE COURT: Overruled.

A. It definitely looked like something was there before that there was a path, um, possibly wide enough for a truck to get through.

Q. So, there were no overgrown mature trees in the middle of it?

A. No. No, not very mature, no. No, there was like

kind of sticks and shrubbery and overgrowth. You really didn't get, you could get up so far and then there was a rock pile.

Q. Why to you is the existence to that wagon road important?

A. Um, it's very important because Antietam Drive the way that it is made it's an alley. I think it's, it's not very wide. Um, the entrance into it off of Main Street you could barely get a truck with a trailer to turn there and get everything without hitting a pole or anything. So, there was the matter of if we did decide to renovate or to build a house how were we going to get construction material through that way. There was also the importance that we were having a very big problem with the town of Keedysville and the County and in and coming to an agreement on how to get water and sewer installed back to that to those two properties and then eventually to the third property.

Q. So, if you're describing Antietam Drive from Main Street when you first turn on to Antietam Drive from Main Street can you describe for the Court what that looks like?

A. It looks like an alley.

Q. Okay, so are there building and concrete on both sides?

A. There are buildings probably maybe two feet off, two to three feet off of the alley and into the one side there is a fence with a drop down on the other side as you start going to Antietam Drive.

Q. And you've driven Antietam Drive a lot I guess to get back to your property?

A. Yes.

Q. Can two cars pass each other going through there?

A. No.

Q. In fact, if a car is parked there you can't get through there at all, isn't that true?

A. It's true. And in fact, somehow the one property owner at the corner of Antietam and Main somehow got a parking spot put back there and now it's even more narrow to get through.

Q. So, if you were to try to get anything other than one care back there it would be terribly difficult?

A. Yes.

Q. You grew up in Keedysville, correct?

A. I did.

Q. Can you describe - - Can you describe what your husband introduced into evidence that was a arial photograph historically. Can you describe for the Court where you grew up in Keedysville, if you can locate it on this map?

A. Can I step down? (Witness steps down to easel) I'm like really horrible with maps.

MS. PEEPLES: May I orient her?

THE COURT: Yes, please.

Q. This would be Stonecrest.

A. Okay.

Q. This would be Main Street.

A. So, then, this is Dogstreet, right here?

Q. Okay.

A. So - -

MS. PEEPLES: Let the record reflect she's pointing to - -

THE COURT: To Dogstreet.

A. Dogstreet. So, this is my mom's house.

THE COURT: Okay, at the corner of - -

A. Right there where I grew up.

THE COURT: Right next to Mr. Levey's house.

A. Mr. Levey is my stepfather.

THE COURT: Okay. So, that's Mr. Levey's house and your mom's house?

A. Yes.

THE COURT: Understood.

A. It was my grandmother's house.

THE COURT: And they live at the corner of Dogstreet and what is that road?

A. This is Mt. Vernon lane or Drive.

THE COURT: Mt. Vernon.

A. Cuz this is - - Yea, this is Mt. Vernon Lane I believe.

THE COURT: Okay.

A. Um, so, my great-grandfather owned the house that we moved into February of 1977.

THE COURT: Okay.

A. And I lived there until 1999 when I moved down the street onto Main Street for a couple months.

THE COURT: Okay.

Q. So, where did you live on Main Street?

A. Um, the old schoolhouse, which is kind of right up here, that used to be a Civil War Hospital.

Q. Um, and from Main Street can you point out where Antietam Drive would be?

A. Okay, so, so this is Antietam Drive I believe, yes. Yeah, that's Antietam Drive I believe.

Q. Is the house that you've been referring to as the yellow house is anywhere on that map?

A. Here.

THE COURT: Indicating the upper house on what I think we all know as the Deena Holder Uncle Eddie's area of the picture.

A. No, yea, yellow house.

THE COURT: That's the yellow house?

A. Yellow house, gray house and then this was divided off for Uncle Eddie's back there.

THE COURT: Okay. Gray house being the second house on that property.

Q. So, in terms, looking at this map then, in terms of where you described that you could walk out and you could see what you believed to be a path prior to the existence of any bobcat going through, can you point out where you might have seen that on this map? If this is Stonecrest.

A. Where's Stonecrest?

Q. This would be Stonecrest.

A. Okay, and then - - I'm sorry. I'm getting really - - So, this is here. This is, right, no, is that the railroad bed there?

MR. PEMBROKE: Objection.

THE COURT: Well, you have to tell us, ma'am.

A. It's not marked.

THE COURT: Sustained.

A. So, it's kind of - - Okay. So, that's the railroad and this - - So, I think it was like right around in here.

MS. PEEPLES: Let the record reflect she is pointing to where she observed a road, which would be behind where

existing Stonecrest Development is.

THE COURT: She's indicating with her finger the backs of lots 1, 8 and 9. 7, 8 and 9. Sorry, the 1 looked, like, the 7 looked like a 1. 7, 8 and 9 if you were looking at plat 8293.

Q. So, can you describe - - Strike that. As a child when you were growing up in Keedysville on Dogwood Road, did you have an occasion to go back to what is now known as the Young property?

A. No. We were instructed not to go back there. Not to go near the property.

Q. Okay. Was there any reason why you were instructed not to?

A. Um, both my grandmother as well as my mother - - Well my grandmother worked at the Post Office, knew everybody and of course was neighbors and she said don't go back there. He's not a very nice man.

MR. PEMBROKE: Objection.

THE COURT: Sustained.

Q. Do you have any personal knowledge of how your mother or grandmother used to walk around that area of town?

A. My grandmother never had her license, so she didn't drive. They, um, my grandmother - - What do you mean walked around the town?

Q. Did anybody make use of Dogstreet Road back, you know, when you were growing up or did your parents make use of that road?

MR. PEMBROKE: Objection. Did anybody make use of Dogstreet Road.

Q. I said her parents or her grandparents.

THE COURT: Then you changed it to anybody.

MS. PEEPLES: I'm sorry, I didn't mean anybody.

THE COURT: Sustained. I think probably every resident of Keedysville probably used Dogstreet Road.

Q. Probably make - -

A. Yeah, we used Dogstreet before our address was 9 Dogstreet it was Mt. Briar Road so.

Q. Okay. Did you have any occasion to observe any of the properties that would be Stonecrest or your current property when you were growing up in Keedysville?

A. Um, Stonecrest, the field was right next to our house at the edge of my parent's property. It's a pretty steep hill so you kind of have a good view over the field and in that general direction from the very top of their property.

Q. So, as you were growing up during that time period what was in that field?

A. Cows.

Q. Cows.

A. Overgrown cows, yeah.
Q. They just were wondering through the field?
A. Yeah.
Q. Did you have occasion to see any fences or anything in that field from your view what was the Stonecrest property?
A. Not from my view, no.
Q. Have you taken any photographs of what you believe to be the wagon road that you observed?
A. Um, I may have take a picture of the one on our end of the side but I don't remember that I did.
Q. Okay. Were you present when Mr. Holder testified that he was using a bobcat to clear what he thought was the wagon road?
A. Was I present that day?
Q. Yes.
A. No, I was not.
Q. Did there come a time when you learned that there was a dispute with Mr. Young over the wagon road?
A. Yes.
Q. And when was that?
A. Um, I guess it would have been when I was made aware that there was a confrontation the day of the backhoe, that he had come in and spoke to Justin about that.

Q. Now you've heard, and you've testified to the fact that Uncle Eddie's owns certain property near or of of where the gray house is situated.

A. Yes.

Q. Do you have any membership interest in Uncle Eddie's?

A. Um, I don't know how to answer that.

Q. Are you - - Are you a - - Is the LLC in your name? Do you have any authority to act on behalf of the LLC?

A. Um, I don't believe so.

Q. Have you been designated as a member or an officer of the LLC?

A. I believe. I don't - - I'm not sure.

Q. Have you ever signed any kind of operating agreement or any other documents reflecting that you have any kind of decisions that you can make on behalf of Uncle Eddie's?

A. No. I - -

MR. KLINE: Your Honor, if I may? Obviously, I represent Uncle Eddie's but Deena Holder I'm going to represent is a member of Uncle Eddie's.

THE COURT: She is a member?

MR. KLINE: She is a member.

THE COURT: Does she just not know?

MR. KLINE: She does not know. She's gonna introduce a certified copy of a deed. I just want to point out I don't want to call her twice given the fact the Court already ruled on one attorney, question one witness at a time.

THE COURT: Does she pay taxes on Uncle Eddie's? Does she get a K-1?

MR. KLINE: I don't know.

THE COURT: Who are the other members of Uncle Eddie's?

MR. HOLDER: Your Honor, as of 2019, Deena Holder is no longer a member of Uncle Eddie's. There's been a management change. I'm the manager of Uncle Eddie's.

THE COURT: Who are the owners of Uncle Eddie's?

MR. HOLDER: It's a LLC, Cool Bus LLC that - -

THE COURT: What is it?

MR. HOLDER: Cool Bus, LLC.

THE COURT: Cool Bus, LLC is the member - -

MR. HOLDER: They're the member.

THE COURT: They're sole member?

MR. HOLDER: They're a sole member. And Sharpsburg Property Management is the Manager of the LLC and it's an LLC - -

THE COURT: Hang on, hang on. So, Uncle Eddie's, LLC, hang on. As single member Cool Bus - -

MR. HOLDER: Cool Bus, LLC.
THE COURT: Okay. Who owns Cool Bus, LLC?
MR. HOLDER: My children.
THE COURT: What are their names?
MR. HOLDER: Adrian Holder and Maura Holder.
THE COURT: What is it?
MR. HOLDER: Adrian Holder and Maura Holder.
THE COURT: Mara?
MR. HOLDER: Mara. M-A-U-R-A.
THE COURT: How old is Adrian?
MR. HOLDER: Adrian is, she'll be sixteen in July.
THE COURT: How old is Maura?
MR. HOLDER: I'm sorry, she's sixteen. She gets her license in July. I'm sorry. Okay, so she's sixteen as of January 4th and Maura is thirteen as of January 5th.
THE COURT: Okay. Can - - Hang on. Can a thirteen-year-old own an LLC?
MR. HOLDER: They can be the beneficiary of a land trust.
THE COURT: I'm sorry?
MR. HOLDER: They can be the beneficiary of a land held in trust, yes, Your Honor.
THE COURT: You're going to be taking the stand here afterwhile because I want to understand this. Okay.
MR. HOLDER: That - -

THE COURT: We're going to have it under oath.

MR. HOLDER: Yes, sir.

THE COURT: Okay.

MR. KLINE: Your Honor, what I'm going to do is we'll let him ask Uncle Eddie's - -

THE COURT: Because I'm interested whether Adrian and Maura pay taxes at the LLC. Do they get a K-1?

MR. KLINE: Understood and I understand the Court's question. However, at this point I'm just going to withdraw what I was going to ask Ms. Peeples to do and we'll handle it separately.

THE COURT: Okay. I will let you all know I've always been curious as to who Uncle Eddie's is.

MR. HOLDER: Sure.

THE COURT: That's just what I want to understand.

Q. Have you received a K-1 or any other income from Uncle Eddie's?

A. No.

Q. And in fact, sitting here until today you weren't even sure that you were a member of Uncle Eddie's until hearing that you were removed is that correct?

A. Well, yeah, because there's this other extenuating circumstances that - -

Q. Okay. Do you have any desire to own Uncle Eddie's?

A. Not after all this. My dream was ruined.

THE COURT: Out of my own curiosity, what is Uncle Eddie's? Is it like a - -

MR. HOLDER: It's an LLC.

THE COURT: Oh, I understand. What does Uncle Eddie's do on the property or is it just a property owner?

A. It's just the name of the property.

THE COURT: Okay. Okay. I thought it was like a type of place I could, you know, an old wrought iron fence and, you know.

A. No, it's - -

THE COURT: Consignment, thrift shop type of place. Just from the name.

A. Well, the name comes from a Grateful Dead song, Broke Down Palace.

THE COURT: Okay, got it.

A. Because when we bought it, it was a broke down palace and it was by a creek so.

THE COURT: Well then, you now know I am not a dead head. Okay. (Laughter). Alright, so it just comes from a song.

A. Yes.

THE COURT: And it just owns the land. There's not a business there?

A. No.

THE COURT: Fair, got it.

Q. In walking around your property and what you perceived to be is the wagon road did you have an occasion to notice any No Trespassing signs?

A. No, not in the area that I walked.

Q. And growing up in the Keedysville area did you have any occasion around Mr. Young's property to notice any No Trespassing signs?

A. I didn't notice any.

MS. PEEPLES: Your Honor, I have no further questions for Mrs. Holder.

**END OF DIRECT EXAMINATION**

THE COURT: Mr. Pembroke, do you have any cross-examination?

MR. PEMBROKE: Yes, Your Honor.

**CROSS EXAMINATION**

BY MR. PEMROKE:

MR. PEMBROKE: Your Honor, may I see Deena Holder's exhibit 5?

THE COURT: I think the Clerk will have it.

A. I have it.

THE COURT: She has it up there with her.

A. Would you like this, sir?

MR. PEMBROKE: May I have just a moment?

THE COURT: Sure. And just for clarity Mr. Clerk, did

we - - We admitted 5 and 6 for Deena Holder?

CLERK: I believe so.

THE COURT: Okay.

MR. PEMBROKE: If I could see 6?

THE COURT: He has it.

Q. Mrs. Holder, does Exhibit 5, which is the deed dated August 30, 2018, referring to 25 Antietam Drive, does this document specifically reference a wagon road?

A. I wish I would have brought my reading glasses.

THE COURT: Ms. Holder. (Passes reading glasses) Make sure you bring them back because I can't see a thing. I have extras up on my desk.

A. No, not in this one.

Q. And who is the grantor in this deed?

A. Carl French.

Q. Okay, and who's the grantee?

A. Me.

Q. Okay. Now, on Defendant's exhibit 6, the print is a little bit bigger, okay. You would look at the fourth indented paragraph, this paragraph here.

A. Okay.

Q. Is the wagon road specifically mentioned in that deed?

A. This mentions the wagon road in that paragraph.

Q. And who is the grantor in that deed?

A. From here at the top?
Q. Yes, ma'am.
A. Um, so the grantor is Carl French and I'm the grantee.
Q. Okay, and is this for the, are these two, are these two, are these two deeds do they refer to the same property?
A. They do.
Q. Okay. Thank you. Were you aware that in the land records there is a declaration from predecessor in the title the Hutzells indicating that ingress and egress to 25 and 28 Antietam Drive is to be over Antietam Drive?
A. That's what I was told, yes.
Q. Okay. And do you know whether or not that declaration was filed before or after your purchase of the property?
MS. PEEPLES: Objection.
THE COURT: Overruled. If she knows. She may not know.
Q. You may answer. If you know.
A. The declaration by the Hutzells?
Q. Yes, ma'am.
A. That that was their way out?
Q. Yes, ma'am.
A. Um, I was aware that it was done prior to us

building or I mean, I'm sorry, purchasing the property.

Q. Okay. I have no further questions.

**END OF CROSS EXAMINATION**

**REDIRECT EXAMINATION**

BY MS. PEEPLES:

MS. PEEPLES: Mark this as number 7 please.

Q. What I'm re-showing you is our exhibit number 5. Who's the grantor and who's the grantee in that deed?

A. Carl French is the grantor and I'm the grantee.

Q. Okay. I'm showing you what's been marked as Defendant's exhibit 6. Who's the grantor and who's the grantee in that deed?

A. Carl French is the grantor and I'm the grantee.

Q. In number 6? Can you read the top?

THE COURT: I'm not teasing you but do you need glasses?

A. No, I can see that one. So, you're talking about exhibit 6.

Q. Exhibit 6. If you look at the confirmatory deed.

A. Uh huh.

Q. Carl French and Deena Holder.

A. Correct.

Q. So, what I'm showing is I've marked as Defendant Deena Holder exhibit number 7. Can you tell the Court what that document is?

(Defendant Deena Holder exhibit 7 was marked for identification)

A. This a confirmatory deed made on July 18, 2020, between David W. Hutzell and Mark W. Hutzell, Personal Representatives of the Estate of Mary Jane Hutzell.

Q. And who did they give - - Who is the deed to?

A. Carl French.

Q. So, the Hutzells then did a confirmatory deed or someone on behalf of the Hutzells did a confirmatory deed?

A. Correct.

Q. If I can refer you down probably half of the page if you can take a look at it. Does that deed from a representative of the now deceased Hutzells to Carl French reference the wagon road?

A. Last full paragraph on the thing?

Q. Can you please read it for the court?

A. Whereas although the 8/29/2017 Deed stated that the lands conveyed therein were conveyed "Together with the buildings and improvements thereon erected, made or being; and all and every, the rights, alleys, ways, waters, privileges, appurtenances - -

THE COURT: Appurtenances, go ahead.

A. - - and advantages thereto belonging, or in

anywise appertaining," the said 8/29/2017 Deed did not expressly identify the perpetual use of the Cost wagon road, as further described herein originating at Cost's Crossing, as further described herein, which was created by deed dated March 22, 1872 for the benefit of the lands containing the lands herein described when said lands were conveyed from Aaron and Malinda Cost to David Kretzer and recorded in W.McK.K.6 folio 363 among the land records for Washington County (the "Cost/Kretzer Deed") and

Q. So, is it your understanding that that deed is correcting a mistake that was made when the Hutzells conveyed the deed to French and then to you?

A. Yes.

Q. So, is it your understanding that that deed purports to correct the discrepancy in that it re-adds the wagon road?

A. Yes.

Q. To your deed?

A. Correct.

Q. I have no further questions. Oh, I'd like to move number 7 into evidence, Your Honor.

THE COURT: Any objection?

MR. PEMBROKE: No objection. It's certified.

THE COURT: Number 7 is admitted.

(Defendant Deena Holder exhibit 7 was admitted into evidence)

Q. I have no further questions, Your Honor.

**END OF REDIRECT EXAMINATION**

THE COURT: Okay. She may step down.

MS. PEEPLES: Thank you Mrs. Holder.

**END OF TESTIMONY OF DEENA HOLDER**

MR. KLINE: On behalf of Uncle Eddie's call Justin Holder.

THE COURT: Why is he testifying again?

MR. KLINE: Testify on behalf of Uncle Eddie's. He's testified on behalf of himself.

THE COURT: I said we were going to do each witness - -

MR. KLINE: Then, um - -

THE COURT: Hang on. Mr. Pembroke, do you wish to be heard?

MR. PEMBROKE: Your Honor, it was my understanding that each witness had a designee from the Defense team would examine and re-direct each particular witness that the Defense called. Even if you're a party if you testify at trial, you're still a witness for that purpose so I think that, I think this is not the procedure that we talked about. I'd object.

THE COURT: Ms. Peeples.

MS. PEEPLES: I'll feel this one, Your Honor. Justin Holder in I guess on the record and not official testimony was trying to describe to you the corporate layout of Uncle Eddie's and that Uncle Eddie's is now owned by an LLC, which is owned by his daughters. So, sitting here today Justin Holder has - - Do you have an interest in Uncle Eddie's?

MR. HOLDER: I'm the manager of Sharpsburg Property Management, which is the LLC management of - -

THE COURT: Hang on a second. Was the purpose for calling him to discuss the ownership issue?

MR. KLINE: It was for nothing more than to enter three certified deeds regarding Uncle Eddie's ownership or alleged ownership.

THE COURT: Do you know which deeds they are?

MR. KLINE: They were discussed before.

THE COURT: I mean they are certified deeds aren't they just going to come in anyways?

MR. KLINE: Yes, yes, they are.

THE COURT: Okay. Why don't you go hand them to Mr. Pembroke and we'll just decide if by stipulation they can come in.

MR. KLINE: For the record, Your Honor, providing copy to counsel.

THE COURT: Yes.

MR. KLINE: And if I may, Your Honor, in chronological order, the first one is a deed dated April 10, 2018, from Bryan Smith, B-r-y-a-n Smith to Uncle Eddie's, recorded at 5726 folio 313, 2018.

CLERK: Be number 4 Uncle Eddie's.

MR. KLINE: And number 5 is a confirmatory deed dated July 18, 2020, from David W. Hutzell and Mark H. Hutzell, Personal Representatives of the Estate of Mary Jane Hutzell to Uncle Eddie's at liber 6468 folio 345.

(Defendant Uncle Eddie's exhibits 4 and 5 were marked for identification)

THE COURT: So, that was Uncle Eddie's 4 and 5?

MR. KLINE: Yes, sir.

THE COURT: Any objection?

MR. PEMBROKE: No, Your Honor.

THE COURT: They are admitted.

(Defendant Uncle Eddie's exhibits 4 and 5 were admitted into evidence)

MR. KLINE: Your Honor, at this point in time, the Defense had scheduled their experts to appear tomorrow.

THE COURT: Okay.

MR. KLINE: I would indicate that it is 4:10. We did

get out a tad late yesterday. I would suggest that we just reconvene tomorrow. I would slightly recommend to the Court that we adjourn till 9:00 o'clock tomorrow morning.

THE COURT: Your thoughts Mr. Pembroke?

MR. PEMBROKE: Your Honor, I believe we still have the issue that the Court reserved earlier this morning with respect to the expert testimony of Mr. Dowling.

THE COURT: Okay. Why don't we talk about that before we break for the evening? Let me find my notes. Okay. Regarding Mr. Dowling, my understanding is that Defendant Holder amended answers to interrogatories on March 22 when there was a discovery deadline on March 31. I want to confirm that with the scheduling order. Yes. And the note that I have to myself is was that enough time for the Plaintiff to do a discovery deposition before discovery was to be completed. Mr. Pembroke, I'll hear from you first.

MR. PEMBROKE: Well, Your Honor, the obvious answer to that is no. There would not have been sufficient time to even make the election to do that. Therefore, I would object to this witness being called as an expert or well as an expert by the Defense in this matter.

THE COURT: Do you wish to be heard Mr. Holder?

MR. HOLDER: I would note for the record that

Plaintiff didn't depose any experts.

THE COURT: That doesn't matter.

MR. HOLDER: Okay.

THE COURT: I only want to know about this expert.

MR. HOLDER: I made a good faith effort. I discovered him within the discovery period. I put him on the interrogatories the day after I submitted updated interrogatories the day after I knew he had relevant opinion to this case. I thought he could be very helpful to the Court in deciding the boundary line. I believe he'll testify similar to Mr. Joliet as far as the boundary line being from the stone and on the Cost Keedy division line. He did a very good job with the two title deeds that we're working with 520 deed and the IN17 538 deed. The Court may find him helpful. Other than that, putting in a boundary he doesn't have a lot to add to the case.

THE COURT: Did he produce a report?

MR. HOLDER: He did produce a report. I produced that report in request for documents to Mr. Pembroke. I produced his entire work product that he produced to me in the Estes case to Mr. Pembroke.

THE COURT: And what does any of his opinions have to do with the land we're talking about here?

MR. HOLDER: When he examined title for the Estes

property, he examined the Keedy deed that was Mr. Young's because part of Estes comes out of Young that was before the railroad bisected it. He found all the boundaries in the title. He's never been on the land and actually measured them but he has the title by deed for the Court just, with just a little bit more clarity than what Mr. Joliet, because he's an expert surveyor and an attorney. He's very well versed and I felt him very useful. In his opinion he was just very well spoken. And I believe the Plaintiff would find him equally as useful in determining the title lines.

THE COURT: I understand. But did he discuss in his report Parcel 3?

MR. HOLDER: He did. He drew it as a little green line on his work product and he thinks it's basically wherever the line gets drawn in Parcel 3 he sort of spinning on the stone. He just filed a motion, he has an affidavit in the Estes case for summary judgment where he's sort of saying, hey, wherever we decide the boundary up here it's gonna decide it down here. And he has evidence to help the Court decide that.

THE COURT: Explain that a little more. What do you mean he has evidence to help me decide where Parcel 3 is? Don't I know where Parcel 3 is?

MR. HOLDER: Well, I think that's the problem. I

think that if the boundary line Fred Frederick drew in the Estes case is correct, then - -

THE COURT: If it is.

MR. HOLDER: If it is. Then Parcel 3, remember I told you in the Selby Motion to Dismiss it I think it's a sliver. I don't think that the (unintelligible) Tree is actually where the fence is. I think and I think our experts can help you, I think it's thinner than that. I think the fence got moved somehow and now we have title lines that are not on the ground or somehow and I need a surveyor to explain this but the way that tax map is something happened and then when you kick that whole panhandle out it turns the property line. I think that's important.

THE COURT: So, that Parcel 3 gets thinner?

MR. HOLDER: Well, I think it gets thinner because if it was all, if it was always Stonecrest or Jennifer Butts and they give out and they set monuments in the ground and they say this is where we're giving you on this plat, that's pretty solid where the people in Stonecrest own but whatever remaining slivers and remaining lands there are - -

THE COURT: The gap.

MR. HOLDER: Yeah, the gap, is important because that's the title line of the, that's the Cost Keedy

division line. That's where the right-of-way runs. That's where it burdens. That's the whole case. I mean it's - - And if John Dowling can put that on the ground through record title back in 1864, I just think that would be very helpful to the Court. And that's why in good faith I introduced him to the interrogatories as being beneficial to any party.

THE COURT: Well, I don't doubt that you did it in good faith. If I take it at your word you learned about it through a deposition in a different case.

MR. HOLDER: Correct.

THE COURT: And you as soon as you could you updated discovery in this case.

MR. HOLDER: I did.

THE COURT: I think that's good faith. I'm not questioning that. My concern is - -

MR. HOLDER: I honestly don't - -

THE COURT: - - my concern is there was a discovery deadline in this case that ended eight days after you notified.

MR. HOLDER: It did.

THE COURT: And even to put a person on notice for a deposition Mr. Pembroke would have had to have given at least ten days.

MR. HOLDER: Ten days.

THE COURT: My belief is that a discovery deadline means you got to give the other side a chance to do their discovery that they're entitled to before the deadline. Not I'm gonna - - You know, for example. Let's say you had amended on the final day of discovery. He would have been locked out from taking that deposition. Right?

MR. HOLDER: Correct.

THE COURT: You don't have to agree with me or disagree.

MR. HOLDER: No, I do. And I - -

THE COURT: I'm just giving you an example. If you done the amendment on the last day of the deadline then Mr. Pembroke would have been locked out of discovery and in that situation, I think I would have excluded the witness. It was too late. Okay. I'm backing up now. One day, two-day, three-day, four-day, five days, eight days before the discovery deadline you learn of it. I think you made a good faith effort. I'm not questioning your good faith. But I'm concerned it was just late.

MR. HOLDER: Well, Mr. Pembroke added Jesse Downs late and I though to myself, how am I gonna - - Is he going to say anything that surprises me? And I don't think Mr. Dowling is going to say anything that surprises Mr. Pembroke. I just think he's going to be able to articulate the boundaries that Mr. Joliet reviewed in his

testimony with clarity, with the clarity of a professional surveyor and an attorney that's his testimony is being used in a Court of Appeals.

THE COURT: Well, I am concerned that the introduction of the gap through an expert is a totally new thing in this case.

MR. HOLDER: Okay.

THE COURT: I asked you two weeks ago, I asked you two weeks ago in our pre-hearing conference, I said please explain your case to me. Is it that Parcel 3 is Parcel 3 and it abuts up to Stonecrest or is there a gap between Parcel 3 and Stonecrest? And you could not answer that question for me. You said you didn't know. So, how can I expect Mr. Pembroke to have any idea what Mr. Dowling is going to come in here and say when he didn't have an opportunity to depose?

MR. HOLDER: Well, I think he could have asked me. He could have asked me in an interrogatory. He could have brought a motion. He could have asked for an extension on the discovery deadline. I would have agreed to it. I would have stipulated to it. I've stipulated to everything in the case. I would have provided Mr. Dowling to him immediately.

THE COURT: I understand. I appreciate that.

MR. HOLDER: I would have done everything I could.

THE COURT: I appreciate that. And I appreciate your good faith. And I really do mean that. I think you answered it as soon as you could. The concern I have is that there was a discovery deadline, and the Rules provide that a party can depose but only after at least ten day's notice and your amendment did not give Mr. Pembroke enough notice. Coupled with two weeks ago I asked you that exact question. Is there a gap or is there not a gap and you were unwilling or unable to give me the answer and therefore I don't know how Mr. Pembroke could possibly understand what Mr. Dowling is going to come in here and say? And I think that would be unfair to the Plaintiff. Mr. Dowling will be excluded as a witness.

MR. HOLDER: I understand, Your Honor. Thank you for your time.

THE COURT: Yes, sir. Is there anything else we need to finish up before we break for the evening from the Plaintiff?

MR. PEMBROKE: No, Your Honor.

THE COURT: Anything from any of the Defendants?

MS. PEEPLES: No, Your Honor.

MR. KLINE: I'll ask again for a time check only because I know we scheduled - -

THE COURT: You got to give me a few minutes.

MR. KLINE: Understood again.

THE COURT: You have to give me a break. Give me a second. Okay. And then let's talk about time because I think the Plaintiff is going to be way under.

MR. KLINE: No, I agree, and I understand - -

THE COURT: They are allotted eight hours, but it doesn't mean I'm suddenly going to say when you hit eight hours, we're stopping the case.

MR. KLINE: No.

THE COURT: The case is scheduled for all day tomorrow and we're going to go, I presume, we're going to go all day.

MR. KLINE: Understood and I certainly think both sides are planning on that but at the same time I recognize the Defense has spent a significant amount of time in comparison to Mr. Pembroke.

THE COURT: Significant.

MR. KLINE: I said - - I gave you significant.

THE COURT: Alright, let me do the math here. Hang on a second. I'm not good at math. That's why I'm an attorney.

MR. KLINE: I've done it for you, Your Honor. Five hours, four hours for the Plaintiff. Sorry.

THE COURT: Have you? No, I'm pretty close. I got it here in a second, hang on. Today, the Plaintiff went

for one hour, the Defense went for four hours. Adding that on to yesterday the Defendant has now gone for six and a half hours. The Plaintiff has gone for three hours and fifteen minutes. I'll actually call that three and a half because I'm sure there was some motions. None of those times include all the motions colloquy that we have had. At our pre-hearing conference I tried to adjust out opening statements, closing statement, time to take breaks. Ms. Peeples, you weren't there, but essentially what I said was, look, I think we're going to have this much true witness time and we're just going to divide it evenly. Eight hours for the Plaintiff, eight hours for the Defense. Obviously, the Defense is much closer to their limit than the Plaintiff. However, we are now going into day 3. I am not at eight hours for Defense is going to say you're done. I'm going to allow you to present your case tomorrow. Mr. Pembroke is going to have his opportunity to cross-examine and we're going to close tomorrow, I think.

MR. KLINE: Definitely, Your Honor. But again, knowing that we spent a significant amount of time today I don't want to try the Court's patience tomorrow because an hour and a half may take us to lunch and I certainly want to allow enough time for Ms. Peeples, Mr. Holder and myself to plan on closing because that would be part of

the eight.

THE COURT: No, it' not part of the eight.

MS. PEEPLES: May I give a thought, Your Honor?

THE COURT: Yes, ma'am.

MS. PEEPLES: Ms. - - Tracie Clabaugh is an expert witness that we intend to call tomorrow.

THE COURT: Yes, tell me the batting order for tomorrow.

MS. PEEPLES: She basically, her report has been provided in discovery. She basically is a title attorney who reviewed all the deeds in this case and determined that the, you know, rights-of-way or the wagon road right-of-way benefits Mrs. Holder's property at Antietam Drive. Basically, she did a review of the deeds. I don't think that her review of the deed is any different than anybody else's review of the deeds so I can somehow expedite her if counsel is willing to stipulate as to what her testimony - - I mean I'm proffering that her testimony is going to be she went through the title chains, she had a title abstract done, there were several indications of rights-of-way and easements pertinent to the property.

THE COURT: Right.

MS. PEEPLES: I mean, unless you really feel the need or counsel really feels the need for me to have her

recite what seems to be in evidence via the deeds, via the whole historical chain to Mrs. Holder's property I can certainly expedite that or we could stipulate.

THE COURT: As, well, let me suggest that I don't know that Mr. Pembroke can even answer that question unless you are also willing to stipulate Tracie Clabaugh can say nothing about whether that easement has been terminated by adverse possession, actions by the serving the State to build a neighborhood over top, latches or that the easement as described in the 1872 deed never actually got all the way to Dogstreet Road. Are you willing to - - Are you willing to stipulate to those because if you're not willing to stipulate to that I bet Mr. Pembroke wants to cross-examine her?

MS. PEEPLES: I mean I think, I think she's going to talk about the plats, but I think that in the event that we can somehow streamline her testimony.

THE COURT: I have no doubt that Tracie Clabaugh is, she's a good title attorney. I've heard of her before. I'm fully expecting she can come in here and say I looked at all the deeds and in my opinion, there was an easement called the wagon road easement that benefitted the Defendant's properties, and it went out to Dogstreet Road. Or that it went out somewhere. That's what she can say, right?

MS. PEEPLES: Absolutely.

THE COURT: That's why you're calling her.

MS. PEEPLES: Absolutely.

THE COURT: Okay.

MS. PEEPLES: But we may have her discuss some things on the plat outside of that but to the extent that what Your Honor just said - -

THE COURT: I think you can - - I don't know that Mr. Pembroke is going to object if you get to that opinion with her very quickly and then talk about anything else you want to talk about. Mr. Pembroke, can you help me here? Are you ready to stipulate to anything?

MR. PEMBROKE: No, Your Honor.

THE COURT: Okay. So, Tracie Clabaugh is your first witness tomorrow?

MS. PEEPLES: Uh, no I believe - -

MR. HOLDER: Mr. Estes is at 9:00 o'clock.

THE COURT: Okay. I just, if you can help me with a little batting order so I can be ready.

MR. HOLDER: Yeah, I have Mr. Estes at 9:00.

THE COURT: What's Mr. Estes first name?

MR. HOLDER: Benjamin Estes at 9:00.

THE COURT: Benjamin.

MR. HOLDER: And then I have Tracie scheduled for 10:00 o'clock.

THE COURT: So, Ben Estes at 9:00 a.m.

MR. HOLDER: Um hum.

THE COURT: And I realize this is just scheduling. Tracie Clabaugh at 10:00 a.m. okay.

MR. HOLDER: Yes, and then Mr. Nagle asked me when he would be and I had him at 1:00 p.m., George Nagle of Fox and Associates, the surveyor that drew the exhibit that Mr. Pembroke was talking about.

THE COURT: And you have him at when 1:00?

MR. HOLDER: 1:00 P.M. and he produced the survey certificates attached to the quick claim deeds associated with Jennifer Butts to me and Gary Castle to me.

THE COURT: Okay.

MR. HOLDER: So that's - - and then the Town.

THE COURT: Okay. When do you want to try to slide in the Town or is the Town after George Nagle?

MR. HOLDER: You know, I don't know how long Ben Estes has a like for whatever reason his depositions seem to go long with me and Ben. We can't get together. I really only need like fifteen minutes from him.

THE COURT: Well - -

MR. HOLDER: And the town I feel like is going to be a little bit of a bear perhaps, I don't know.

THE COURT: A little bit of a push?

MR. HOLDER: Little bit, yeah. So - -

THE COURT: Let me ask it this way then Ms. Peeples. Tracie Clabaugh. Even with cross-examination, if you are able to move quick with her saying, yeah, I think there's an easement and because I reviewed all this and that's my opinion.

MS. PEEPLES: Yeah.

THE COURT: How long do you think she really is as a witness?

MS. PEEPLES: Not long. Half an hour, forty-five minutes at max.

THE COURT: For you or for both, even cross?

MS. PEEPLES: I would expect Mr. Pembroke probably would cross her maybe twenty to thirty minutes.

THE COURT: Okay. Well let's do this. I am hoping Ben Estes can go fifteen minutes like you say but I am concerned that with other litigation that he's involved in and you're involved in that he may, I don't know how he's going to react on the witness stand, I really don't. Okay, but I guess we start with Ben. If he goes smoothly then if I may suggest we get the corporate designee on and off before Clabaugh, if we're before 10:00 o'clock, let's move to the corporate designee if you'd be okay with that Mr. Holder.

MR. HOLDER: Yeah, I would be okay with that. So, you want me to have Mr. Kuczynski to bring somebody for 9:00 a.m. then or 9:30?

THE COURT: I already told them they need to be here, so they know they need to be here at 9:00 a.m.

MR. HOLDER: Okay, so we'll get - -

THE COURT: Right?

MR. HOLDER: I can do them first then and get them out of here.

THE COURT: I heard you say you were concerned that the corporate designee could end up being a bear.

MR. HOLDER: Both of them could. You know, it's really just simple.

THE COURT: Well, look, let's do this. Let's try to get Estes and the designee done first in whichever order you choose strategically for your case. Then we'll get Clabaugh on.

MR. HOLDER: Okay.

THE COURT: Hopefully we can have Clabaugh on and off before we take the lunch break. Does that sound fair?

MR. HOLDER: Okay. Yes.

THE COURT: Okay. And then we come back with Nagle in the afternoon. Will you have anybody after Nagle?

MR. HOLDER: Just if we couldn't get the corporate or Mr. Estes - -

THE COURT: Understood. But other than that?

MR. HOLDER: That's it.

THE COURT: Okay. Then we would have time possibly I

hope for any rebuttal from the Plaintiff and then we would be closing. Okay.

MR. HOLDER: I did have Mr. Carl French scheduled, but would you have any questions for Mr. Carl French Mr. Pembroke?

THE COURT: I don't know that he answer that until you ask the questions. He can't know what his cross-examination is until you ask direct exam.

MR. HOLDER: Yeah, I don't think I have anything for him so I'm going to cancel him.

THE COURT: Okay.

MR. HOLDER: I think he doesn't need to show up.

THE COURT: He was the owner - -

MR. HOLDER: Of 25.

THE COURT: Who sold 25 to Mrs. Holder.

MR. HOLDER: Yea but you let the deed come in so.

THE COURT: Yes.

MR. HOLDER: So, that deed speaks for itself.

THE COURT: Okay. Alright, does everybody understand the game plan?

MS. PEEPLES: If I may?

THE COURT: Yes, ma'am.

MS. PEEPLES: Just to kind of enlighten the Court. I think Mr. Estes is really personable and he's a really lovely human being but he goes on. Um, so I would just

caution the Court that - -

THE COURT: I have had Mr. Estes at that table, and I have had Mr. Holder at that table, and I had them here for a fairly what was expected to be a fairly contentious motions hearing and quite frankly it was fabulous. They were both on their best behavior and it went swimmingly so I will expect the same tomorrow.

MS. PEEPLES: I do too, Your Honor.

MR. HOLDER: We both have great respect for you and the Court.

THE COURT: Well, thank you. I appreciate that sir. Anything else counsel then for today?

MR. PEMBROKE: No, Your Honor.

THE COURT: Alright, I'll see you all 9:00 a.m. tomorrow.

**END OF PROCEEDINGS OF DAY 2 PM SESSION AT 4:31 P.M.**

DIGITALLY SIGNED CERTIFICATE

I HEREBY CERTIFY that I reported verbatim by electronic device the proceedings in the matter of, *Jeffrey Young v. Justin Holder, et al.,* Case No. C-21-CV-20-371 in the Circuit Court for Washington County, on June 22, 2022, Volume II – Day 2, Afternoon Session, before the Honorable Andrew F. Wilkinson, Judge.

I further certify that the proceedings were transcribed by me to the best of my ability in a complete and accurate manner, and page numbers 1 through 133 constitute the official transcript of the proceedings.

In witness whereof, I have affixed my signature this 7th day of September, 2022.

Linde M. Cessna

Linde M. Cessna

Court Reporter